

GENERAL AVIATION ACCIDENT LIABILITY STANDARDS

HEARING

BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
UNITED STATES SENATE
NINETY-NINTH CONGRESS
SECOND SESSION
ON
GENERAL AVIATION ACCIDENT LIABILITY STANDARDS

JUNE 18, 1986

Printed for the use of the
Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

64-235 O

WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

5261-4

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

JOHN C. DANFORTH, Missouri, *Chairman*

BOB PACKWOOD, Oregon	ERNEST F. HOLLINGS, South Carolina
BARRY GOLDWATER, Arizona	RUSSELL B. LONG, Louisiana
NANCY LONDON KASSEBAUM, Kansas	DANIEL K. INOUE, Hawaii
LARRY PRESSLER, South Dakota	WENDELL H. FORD, Kentucky
SLADE GORTON, Washington	DONALD W. RIEGLE, JR., Michigan
TED STEVENS, Alaska	J. JAMES EXON, Nebraska
BOB KASTEN, Wisconsin	ALBERT GORE, JR., Tennessee
PAUL S. TRIBLE, JR., Virginia	JOHN D. ROCKEFELLER IV, West Virginia

W. ALLEN MOORE, *Chief Counsel and Staff Director*

RALPH B. EVERETT, *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON AVIATION

NANCY LONDON KASSEBAUM, Kansas, *Chairman*

BARRY GOLDWATER, Arizona	J. JAMES EXON, Nebraska
TED STEVENS, Alaska	DANIEL K. INOUE, Hawaii
PAUL S. TRIBLE, JR., Virginia	WENDELL H. FORD, Kentucky

(II)

CONTENTS

LIST OF WITNESSES

	Page
Opening statement by Senator Kassebaum.....	1
Dole, Hon. Robert, U.S. Senator from Kansas.....	2
Prepared statement.....	5
Glickman, Hon. Dan, U.S. Representative from Kansas.....	6
Prepared statement.....	10
Meyer, Russell W., Jr., chairman and chief executive officer, Cessna Aircraft Co.; James S. Walsh, president, Beech Aircraft Corp.; Robert J. Wyma, group vice president, Lear Sigler, Inc., Piper Aircraft Corp.; and Frederick B. Sontag, president, Unison Industries, Inc., Slick Aircraft Products; accompanied by Robert Martin, counsel.....	11
Prepared statement.....	21
Von Kann, Clifton, president, National Aeronautic Assn.; John Sheehan, senior vice president, Aircraft Owners and Pilots Assn.; John Winant, president, National Business Aircraft Assn., Inc.; accompanied by David Scott; and Frank L. Jensen, Jr., president, Helicopter Association Intl.....	36
Prepared statements:	
Mr. Von Kann.....	38
Mr. Sheehan.....	42
Mr. Winant.....	45
Mr. Jensen.....	47
Mr. Scott.....	48

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Burian, Lawrence L., president, National Air Transportation Assn., letter of June 30, 1986.....	59
Lipsen, Linda A., legislative counsel, Consumers Union; Gene Kimmelman, legislative director, Consumer Federation of America, Joseph Goffman, staff attorney, Public Citizen Congress Watch, and Pamela Gilbert, staff attorney, U.S. PIRG, letter of July 17, 1986.....	59

GENERAL AVIATION ACCIDENT LIABILITY STANDARDS

WEDNESDAY, JUNE 18, 1986

U.S. SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:00 a.m. in room SR-253, Russell Senate Office Building, Hon. Nancy Kassebaum [Chairman of the subcommittee] presiding.

Staff members assigned to this hearing: Steve Johnson, staff counsel; Steve Palmer, minority professional staff member; and Amy Bondurant, minority staff counsel.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. The hearing will please come to order.

It is a pleasure to welcome everyone this morning for what I consider a very important hearing on aviation product liability. I have a brief opening comment, and then I am really pleased and honored to welcome as witnesses, first this morning, the senior Senator from Kansas, Majority Leader Senator Dole, and Congressman Dan Glickman.

General aviation, which is a major part of our national air transportation system, is today facing a crisis of unprecedented proportion. Its very survival is threatened. For some, this might seem an exaggeration, but those of us who follow it closely and particularly for those who come from Kansas and are proud of the general aviation industry, this really is a crisis time.

There are at present no training aircraft being manufactured in the United States. The further production of business aircraft, agricultural aircraft, and aircraft used in a myriad of industries for multiple purposes is threatened.

Manufacturers of systems, parts and components of aircraft are being affected, thus raising the spectre of declining availability of parts necessary for the fleet in existence, as well as lack of any new technology for advancement.

Unemployment in the general aviation industry is at 50 percent. As manufacturers of aircraft and suppliers of parts leave the industry, we

are in a position of seeing our industry losing jobs and technology being exported overseas. Very few single or twin-engine piston aircraft are being manufactured today. Sales for turbine engine aircraft for the last 5 months of 1986 are down 40 percent from last year. Jet sales are down 43 percent for the same period.

We are facing the extinction of an industry as we know it. At the present pace, the United States, which has always been preeminent in world general aviation, will be a country consisting of only a handful of manufacturers making only a few business jets.

Product liability costs have played a major role in the decline of this industry. Costs have increased 500 percent in the last five years. Without some redress in this area, we may never again see this industry recover.

While I support the current effort for comprehensive tort reform which we are addressing here in the Commerce Committee, I have introduced legislation in the Senate to deal directly with the general aviation industry and the problems unique to it. One reason for this hearing is to obtain comments on this legislation.

A key feature is the establishment of a uniform Federal standard of liability for the industry, which I think is very important. I believe it is absolutely essential for an industry which, beginning in the days of the Kitty Hawk, has been of vital national concern and for this reason has had to meet stiff Federal regulations. The pervasive nature of the Federal regulations for aviation has sprung from our concern with the development and safety of air commerce and fulfilling our national defense needs.

General aviation must meet Federal standards from the design stage through production to maintenance and operation. I believe it is appropriate, therefore, for the industry to be judged by a Federal standard on questions of product liability.

I will not go further into provisions because the witnesses will be speaking with much expertise on that, but I want to emphasize once again the importance of this legislation in helping us save an important industry. I think it is absolutely essential that we have this legislation signed into law this year.

I am really pleased this morning that all sectors of the aviation community are represented. It is a very impressive list. I would just like to comment for the record, in case anyone thinks that we stacked the deck for this hearing, that we had invited, but they declined to testify, the American Trial Lawyers Association and the Aviation Consumers Action Project.

It is a great pleasure to welcome this morning Senator Dole.

STATEMENT OF HON. ROBERT DOLE, U.S. SENATOR FROM KANSAS

Senator DOLE. Thank you, Madam Chairman. I am pleased to be here both with you, of course, and Congressman Glickman who initiated the action on the legislation on the House side.

I share your views that it is important. I hope that we could do something this year, but I obviously have the same concerns that you expressed with the comprehensive product liability legislation. As controversial as it is, unless we can figure out some way to split off this particular portion, it is going to be very, very difficult.

I think you have touched on the highlights and what this means to our State in particular and the aircraft industry generally. I would ask that my statement be made a part of the record.

I think it is fair to say that we have had a steep and continuous decline in manufacturing general aviation aircraft across the country. As you have indicated, the sales of light aircraft have been dropping because of high interest rates, barriers to foreign trade, uncertainty over tax law changes, investment tax credit for example, a big supply of good and inexpensive used aircraft, and obviously the effects of skyrocketing premiums.

You have given some of the figures, but the work force at Cessna, Beech Aircraft Corp., and Gates Learjet Corp. is down from about 26,000 in late 1979 to 10,000 in Wichita today. This has caused great concern in our State where agriculture is still in a state of distress.

So I suggest that with the aircraft industry as the second largest industry, we view this as a matter of primary concern. It certainly, I think, is indicative that with you presiding and Congressman Glickman and myself here as leadoff witnesses, it is of great concern to our State.

I have information, and you will have testimony from witnesses from Cessna today that they have recently laid off an additional 900 employees, the sharpest reduction in history. Cessna is the world's largest manufacturer of light aircraft and has built more than 176,000 planes, including 1,400 business jets and 2,000 military jet planes.

In the first 4 months of this year, through April, Cessna sold only 153 airplanes worth \$55 million. That compares to 268 planes worth \$151.8 million in the first four months of 1985, the year that was the light aircraft industry's worst.

The Cessna layoff means a payroll loss of about \$20 million and an economic loss to the City of Wichita of about \$50 million. According to Russ Meyer, chairman of the Cessna Aircraft Company and a panelist here today, the layoffs are the result of a decision by Cessna to immediately stop producing its smallest plane, the single and multi-engine piston powered aircraft that are the backbone of its learn to fly operations.

Russ and other company officials attribute the small aircraft shut-down to a continuing slump in sales and, most importantly, to the overall effects of skyrocketing product liability costs.

Madam Chairman, aviation is a natural candidate for Federal product liability standards. General aviation products are federally regulated in design, production and maintenance. Pilots and mechanics are regulated through training, licensing and operating procedures. The air traffic control system is federally operated and interstate in scope. It would make sense to create a uniform standard whereby everyone will be treated equally under the law.

The state of the general aviation industry is serious, and I agree with you that we must do all we can to enact legislation this year. I know that we are down to some 50 legislative days, but if there is some way that we can manage it in the Senate, we will certainly give it our best shot.

Thank you very much.

Senator KASSEBAUM. Thank you very much, Senator Dole.

I know you have pointed out frequently how time is running out for the 99th Congress, and that is one reason that I think the aviation product liability legislation in and of itself is an important focus because of the unique concerns of this industry. The comprehensive legislation will require, I think, different trials and tribulations before successful passage there.

Senator DOLE. Some of our legislative days are quite long. Yesterday is a good example. We went on until after midnight, and today may go on until tomorrow morning in an effort to finish the tax bill. The point I would make, as we sort of scrub the calendar, we may find some time.

I appreciate your initiative and certainly want to be of every possible assistance.

Senator KASSEBAUM. Thank you very much. We greatly appreciate your coming over this morning, as I know you have a busy agenda.

Senator DOLE. I want to wait and hear what Dan has to say.

[The statement follows:]

STATEMENT OF HON. ROBERT DOLE, U.S. SENATOR FROM KANSAS

Mr. DOLE. Madam Chairman, I am pleased to be here today and support my colleague and friend from the State of Kansas, in her efforts to address a critical issue facing the aircraft manufacturers in this country, especially those in my home State.

STATE OF THE INDUSTRY

Since 1978, there has been a steep and continuous decline in the manufacturing of general aviation aircraft across the country. Sales of light aircraft have been dropping for a number of reasons: high interest rates, barriers to foreign trade, uncertainty over tax law changes, a big supply of good and inexpensive used aircraft, and the effects of skyrocketing insurance premiums. Six years of declining sales have trimmed the work force at Cessna, Beech Aircraft Corporation, and Gates Learjet Corporation, from a peak of 25,700 in late 1979 to about 10,650 in Wichita today.

This reduction has caused great concern among many in my home State—and rightfully so. The sad state of the agricultural economy, in addition to the declining number of those employed by the aircraft industry, should certainly be a reason for alarm among those concerned with our State's economy and the future of Kansas. After all, Madam Chairman, the aircraft industry in Kansas is second only to agriculture as our State's largest employer. Approximately, 15,000 people work for Boeing Military Airplane Company alone.

IMPACT ON CESSNA ALONE

Recently, Cessna Aircraft Company of Wichita announced it would lay off an additional 900 employees—the sharpest reduction in its history. Cessna is the world's largest manufacturer of light aircraft and has built more than 176,000 planes, including almost 1,400 business jets and 2,000 military jet planes. In the first four months of this year—through April—Cessna sold only 153 airplanes worth \$55 million. That compares to 268 planes worth \$151.8 million in the first four months of 1985—the year that was the light aircraft industry's worst. The Cessna layoff means a payroll loss of about \$20 million and an economic loss to the city of Wichita of about \$50 million.

According to Russ Meyer, chairman of Cessna Aircraft Company and a panelist here today, the layoffs are the result of a decision by Cessna to immediately stop producing its smallest plane: the single and multiengine piston-powered aircraft that are the backbone of its learn-to-fly operations. Russ and other company officials, attribute the small-aircraft shutdown to a continuing slump in sales and most importantly, to the overall effects of skyrocketing product liability costs. Because these costs must be added to the price of a airplane, today's buyer is paying over \$70,000 per airplane in insurance costs alone.

SKYROCKETING INSURANCE COSTS

Although business aviation's safety record continues to improve, the industry's product-liability insurance bill has climbed an average of 500% per company since 1981. Beech Aircraft Company alone, shelled out more than \$20 million to insure itself against product-liability claims in 1985.

UNIFORM STANDARD MAKES SENSE

Madam Chairman, aviation is a natural candidate for Federal product liability standards. General aviation products are federally regulated in design, production, and maintenance. Pilots and mechanics are regulated through training, licensing, and operating procedures. The Air Traffic Control System, is federally operated and interstate in scope. It would make sense to create a uniform standard whereby everyone would be treated equally under the law.

The General Aviation Liability Standards Act of 1986 will go a long way toward addressing one of the most serious concerns of the aircraft industry. I am happy to be a co-sponsor of this important piece of legislation. As the majority leader, I can tell the distinguished chairman and members of this committee, that I hope to move this bill this year.

The state of the general aviation industry is grave. We can't wait another year, or two years, to address this problem because many of these manufacturers simply will not last that long. I don't know if a consensus can be reached on the overall question of product liability this session, but, as it affects general aviation, Madam Chairman, I believe we can and should enact legislation this year.

Senator KASSEBAUM. It is a pleasure to welcome Congressman Dan Glickman, who represents the district which we consider the home of general aviation.

You have been leading the effort in the House of Representatives with an impressive list of co-sponsors at this point. It is a pleasure to welcome you this morning.

STATEMENT OF HON. DAN GLICKMAN, U.S. REPRESENTATIVE FROM KANSAS

Mr. GLICKMAN. Thank you, Senator, and thank you, Senator Dole. I am delighted to be here, and I applaud your initiative in holding these hearings and getting this subject moving. I would ask that my entire statement appear in the record so that I might summarize, if possible.

Senator KASSEBAUM. Without objection.

Mr. GLICKMAN. I have, as you know, introduced a comparable bill to yours in the House. We have in excess, I believe, of 100 co-sponsors today, bipartisan, House leadership on both sides, different types of folks. The reasons for that are: One, there is a great interest in preserving the health of aviation; and two, I think there is a recognition that particularly in this case you can trace the diminishment of sales and the weakness of the industry in general aviation to the problems of liability insurance, to the problems of the insurance crisis, and to the problems of large judgments.

Now, it has been hard to quantify this issue. The whole issue of general aviation has gotten tied up in the bigger issue of product liability which you and Senator Danforth and others are pushing. That is a very polarizing subject, because inevitably we get into issues such as should we limit lawyers' fees, and should we set caps on pain and suffering, and all these kinds of things that make it just virtually impossible not to have the trial lawyers and the National Association of Manufacturers fighting each other like cats and dogs.

What our bill tries to do is to pull some balance into this picture. It tries to recognize what the problem is here. The problem is largely based on two things.

One, a manufacturer can become singly, fully and completely liable for an accident even though that manufacturer may have been infinitesimally at fault. That is the issue of joint and several liability which basically has afflicted the American tort system for some period of time.

It may be relevant in some areas of the law, but when it comes to an airplane manufacturer who many, many years ago sold an airplane and it in turn went through 8 or 10 or 15 owners, who modified that airplane, and then somebody gets killed in an accident this doctrine just doesn't apply. It belies wisdom to figure out why the manufacturer should be liable for 100 percent of that judgment. That is what is happening today.

The deep pocket theory is affecting very dramatically this industry, and it is one of the reasons why you have these enormous judgments that are not being shared in terms of responsibility.

This is an industry where there are no small judgments. As a general proposition, airplane accidents are fully and completely traumatic, often result in loss of life, and often have people who are flying who are not at the bottom end of the economic level in this country; therefore, you see very large judgments based upon earnings potential of fairly significant amounts.

So we are seeing enormous judgments. There are no small judgments, and the manufacturer is being held liable for 100 percent of the liability. That is not right, particularly when they do not cause it all or may not cause very much of it at all.

The second thing which we have tried to do in this bill, among other things, is address the issue of very old airplanes. At some point, should not the manufacturer not be liable for a plane that is manufactured years and years ago? The obvious answer is yes, and the question is where. Should it be 15 years after you make the plane? Should it be 20 years after the plane? Should it be 30 years?

Right now, there is Federally no limit on the length of time that you have an airplane out there and if something happens to it that the manufacturer is held liable in the chain of events. Using that theory, if you and I went to an exhibit of antiques at the Smithsonian and sat down on a defective chair and got hurt, we could sue the heirs of some estate that was around 200 or 300 years ago.

The fact of the matter is that is ridiculous. There ought to be a limit to the length of time in which someone is liable for the manufacture of that product. What has happened today is we have an enormous amount of used aircraft in America. Some are quite old, and the older they get the more they go through the chain of modernization repair by third parties totally outside the control of the manufacturer.

So we have to ask ourselves the question, who should be liable in those circumstances? Our bill provides for a statute of repose, which says at some point in time, whether it is 12 years in my bill or 17 years or 20 years, at some point in time it is unfair to hold the manufacturer liable any longer.

So those are a couple of things, and of course we have other things in our bills that I am sure the other folks will speak to as well.

It is important to state what we do not have here. We do not have caps on pain and suffering. We do not have limits on legal fees. The reason why we do not, I think, is in my judgment because they do not go to the heart of what is causing the insurance rates to go up.

In this industry particularly, it has to do with very, very large judgments caused by joint and several liability and caused by a lot of older aircraft running through the chain of the system. I hate to see us get hung up on the side issues, which may sound sexy to some interest groups but in which most product liability cases and particularly in this one do not in any way relate to what the cause of the problem is.

I agree with you, Senator Dole, that this is a federally regulated industry. It is federally licensed, regulated and inspected from birth to death. There is zero State involvement in the manufacture and operation of airplanes in this country.

So as opposed, maybe, to some other products, you could make the arguments, well, it is in the States' jurisdiction. With respect to airplanes, however, there is no State involvement. Congress made the judgment years ago that Uncle Sam should be exclusively involved in the regulation of airplanes; therefore, it seems fair to me that Congress and the Federal Government should be involved in terms of how these liability issues are determined.

I hope that we are able to move something, as well, in the House. The polarization on product liability is very strong there. This polarization may be less strong in the Senate as you look at least as if you are moving something along.

What we have tried to do in this bill is to take something which is life or death to our part of the country, the production of airplanes—and by the way, I think it is life or death to America as well, and find a way to keep that industry alive. The ability of this Nation to survive is made greater because of the airplane, and the small airplane has had as much to do with it as the commercial airplane.

We have a package here that could go on its own because it makes sense, it is rational, and it does not tend to polarize all the interest groups in the world. Some people are afraid of it because they say if this door is open people could come through with the more general issue, but I disagree with that. One reason for this distrust is that I have not found a lot of interest groups really pounding at me for introducing this piece of legislation.

I compliment you for moving it here. We will just do our best and hope we can get it enacted this year.

Senator KASSEBAUM. I would like to ask you, Congressman Glickman, if you anticipate the committee marking it up anytime soon?

Mr. GLICKMAN. I do not know. It is no secret that the chairman of my full committee, Mr. Rodino, does not share all of my views on this issue nor on some of the general issues of tort reform in product liability. He is focusing more on the insurance side of the issue, the McCarran-Ferguson issues, antitrust-related issues. As I have told them, even aviation insurance is different from other kinds of insurance. It does not fit into that neat bag of being totally exempt from the antitrust laws.

He has promised me hearings, and so I suspect we will have them. The House jurisdictionally is more complex in terms of committee structure. We have basically the Commerce Committee and the Judiciary Committee with jurisdiction. We are going to try to move it in both places.

There are six of us, three Republicans and three Democrats, who are going to announce next week that we are forming basically a product liability caucus and task force to serve as a clearinghouse.

So my hope is yes, I hope we pass it. We have 100 sponsors. My goal is to get half the House as sponsors of this bill. If we do that, it will be very difficult to withhold some consideration of the bill.

Senator KASSEBAUM. I thank you both for coming. I feel in the Senate, with the Majority Leader on our side, that there is hope. If we can get it out of committee, we can press forward as well, and that may then give a boost to progress.

Mr. GLICKMAN. Of course, you know, in this day and age, with the exception of Senator Dole, who has done this in the budget, and Senator Domenici, it is hard for people to step forward and take risks for fear of what the implications might be. Right now there is great feeling that the Senate is going to have to move first on product liability before the House moves.

What we are trying to do is set the groundwork in motion so that we can be ready to go if you move, and at the same time move ourselves. You know, I would like to mark this thing up today if possible. Peter Rodino and others may not totally share my views on this thing, but we are making some progress.

Senator KASSEBAUM. Thank you very much. I appreciate both of you coming.

[The statement follows:]

STATEMENT OF HON. DAN GLICKMAN, U.S. REPRESENTATIVE FROM KANSAS

Senator Kassebaum and members of the subcommittee, thank you for inviting me to testify before you today about amendment #1823 to S. 100, the General Aviation Accident Liability Standards Act of 1986. I am very familiar both with the contents of this amendment and the problem it addresses, since as you know I introduced a nearly identical bill, HR 4142 in the House. HR 4142 currently enjoys the sponsorship of over 100 House Members from both sides of the aisle.

Being from Wichita, the home of Cessna, Beech and Gates Learjet gives me a special understanding of the problems now faced by the general aviation community. Paramount among these is the dramatic increase in product liability costs which burdens both manufacturers and consumers. Driven by the sizable and unpredictable court judgments and settlements, the product liability costs facing aircraft manufacturers are literally devastating the viability of this industry. In some cases, insurance premiums alone now exceed labor costs, averaging \$70,000 per airplane in 1985, despite the general aviation industry's best safety record in years. Coupled with other factors, this has had a dramatic effect on sales and as a result on jobs. In 1979, over 17,000 general aviation aircraft were sold by United States manufacturers, while last year there were only 2,032 sales. That is a decline of nearly 90% in general aviation sales. This situation is clearly reflected in an analysis by the commerce department of American industries and their growth, which showed that the aviation industry ranked 211 out of 211 industries rated and the sewing machine industry, which was rated just ahead of general aviation did significantly better. Unfortunately, had there been more industries rated in the analysis, it is very likely general aviation would probably still have been last on the list. This presents a very bleak picture, one which I feel could destroy the Nation's general aviation industry unless we move forward the legislation before your subcommittee and other bills.

This is not only a problem affecting manufacturers. It is also a problem for general aviation users who are faced with aircraft prices which have become prohibitive to many and that creates a safety problem because it is keeping some aircraft flying that should be retired. Owners are stretching out the use of their aircraft instead of buying more sophisticated aircraft with price tags that include high liability insurance premiums.

The most obvious and troubling outgrowth of this dire situation, however, is the loss of jobs to those who have dedicated their lives to this industry. In my district alone over 19,000 people have been laid off from their aviation industry jobs. Just two weeks ago Cessna laid off over 900 workers and they anticipate laying off even more workers in the coming months. Furthermore there are rumors of further cut-backs from other companies in Wichita as well. Unfortunately Wichita does not stand alone in this crisis. One of our colleagues from Pennsylvania informed me that the Lycoming Company, a manufacturer of piston engines in Williamsport, laid off over 1,200 workers between 1981 and 1985. The company is now operating at 20% of its operating capacity. Other areas have also been hard hit and need relief.

There is no question that something must be done now to turn this situation around. The amendment which Senator Kassebaum has introduced to S. 100 is aimed at addressing one key problem facing the Aviation industry. Specifically, the amendment would provide uniform rules of liability law for losses resulting from general aviation accidents. It is based on careful studies and consideration of the various measures that have been considered in the past, plus the special issues that are involved in aviation accidents. It is designed with the interests of both those who use and those who manufacture planes in mind. It is fair and balanced legislation. Because of this balance the consumers of planes, the pilots, and the association of business users of aircraft among others, have come on board as active supporters of the bill.

To highlight the main features of my bill and the Kassebaum amendment under this bill:

1. The Federal Courts would have jurisdiction over all general aviation cases in light of the fact that the industry is federally regulated from top to bottom. All general aviation accident cases would be subject to its provisions, whether the case is filed in state or federal court.
2. Damages would be based on the comparative responsibility that is, where more than one party is deemed responsible for the accident, damages must be allocated on a percentage basis.
3. Manufacturers would be jointly liable with each other for a product defect—no parties other than manufacturers are jointly liable.
4. Manufacturers of airframes, powerplants, components and subassemblies could be held liable for equipment which is "unreasonably dangerous for its intended pur-

pose" as well as for negligence. They can also be held liable for failure to supply reasonable warnings against dangers which are known or should have been known to the manufacturer.

5. Non-manufacturers (pilots, FBOS, air traffic control, etc.) could be held liable only for their own actions.

6. Manufacturers would be given certain defenses to liability including the defense that the product was state of the art or the plaintiff misused the product.

7. Evidence of claims for punitive damages would be able to be presented at trial only if the claimant first shows that there is reason to believe that the defendant acted with a conscious flagrant indifference to the safety of others.

8. Evidence of income tax liabilities and other payroll deductions which diminish the earnings claimed to have been lost would have to be considered at trial.

9. The liability of manufacturers and suppliers of repair and replacement parts or components would be limited to a period of 12 years.

10. Attorneys' fees could be recovered by the winning party if it could be shown that the other party's claim was frivolous.

While I realize that other industries have confronted product liability problems and some in Congress believe that we should address this issue in its broadest sense, I believe for a number of reasons that aviation warrants special consideration irrespective whether action is taken on a general bill. First and most importantly, this industry is unique in the extent to which the Federal Government is involved in its operation. General Aviation Products are federally regulated from design through production and throughout the product's service life and maintenance. Pilots are similarly regulated through training, licensing and operating procedures. The mechanics and repair facilities that maintain the products are also regulated as to the training and scope of the work they perform. The Air Traffic Control System on which pilots rely, in federally operated and interstate in scope. Indeed, there is no aspect of this industry which is not subject to Federal control.

Second, as noted above, airplane purchasers, the consumer group in this case, have a compelling interest in resolving this crisis. They are the ones who cannot afford to buy airplanes at the current market prices, which as I have noted, have increased by an average of \$70,000 per airplane to cover liability costs alone. This reality has led the aircraft owners and pilots association, the national business aircraft association and others to take an active role in working toward passage of this legislation. The support of airplane consumers is unique in the product liability arena, which has generally been polarized with consumers and advocates of tort reform being pitted against one another.

Third, general aviation tort law has become highly specialized with nuances issues that are not generally considered part of general tort law. Reform to this special body of law as a result is distinct and will warrant specific action as Senator Kassebaum and I have proposed. Thank you.

Senator KASSEBAUM. If the first panel would please come forward.

It is a great pleasure to welcome this first panel this morning.

From left to right, Robert Martin, who will sit as counsel for the panel; Russ Meyer, chairman and chief executive officer for Cessna Aircraft—Rick Sontag, president, Unison Industries; Jim Walsh, president, Beech Aircraft Corporation; Bob Wyma, vice president, Lear Siegler.

It is a pleasure to welcome all of you. Mr. Meyer, do you wish to go first?

STATEMENT OF RUSSELL W. MEYER, JR., CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CESSNA AIRCRAFT CO.; JAMES S. WALSH, PRESIDENT, BEECH AIRCRAFT CORP.; ROBERT J. WYMA, GROUP VICE PRESIDENT, LEAR SIGLER, INC., PIPER AIRCRAFT CORP.; AND FREDERICK B. SONTAG, PRESIDENT, UNISON INDUSTRIES, INC., SLICK AIRCRAFT PRODUCTS; ACCOMPANIED BY ROBERT MARTIN, COUNSEL

Mr. MEYER. Yes, I will. Thank you.

My name is Russ Meyer, and I am chairman and chief executive officer of Cessna Aircraft Company, which is located in Wichita, KS. Cessna is the world's largest manufacturer of general aviation aircraft. Until recently, we were the only manufacturer in the world with a product line which included practically every type of aircraft, from two-place trainers to intercontinental business jets.

Three weeks ago, we were very sorry to announce to our employees and to our worldwide dealer organization that we have indefinitely suspended production of every piston-powered propeller aircraft. Having produced over 175,000 propeller aircraft over the years, you can imagine the difficulty with which we reached that decision.

As a result of the suspension, Cessna will have less than 6,000 employees at the end of this month. Six years ago, we had over 20,000.

There are several factors responsible for our decision. Among them are economic problems in many parts of this country as well as the international market; a continuation in activity of used aircraft which has hurt new aircraft; and a substantially reduced dealer organization as a result of continued production cutbacks during the past several months.

Product liability, however, was also a major factor in our decision. While product liability was one of several factors leading to our decision to stop production, it will be the single most important factor in whether we ever resume production at sometime in the future.

In fact, I have given my testimony considerable thought during the past few days, and I believe it is important for you and other members of the committee to know that, at least speaking for Cessna, it is unlikely that we will ever build another piston-powered propeller aircraft if the product liability issue is not resolved in a realistic and reasonable manner.

At least from the standpoint of general aviation, therefore, these hearings are very timely, and I appreciate this opportunity to testify. In my opinion, we are on the threshold of seeing an entire industry destroyed because of the uncontrolled impact of a product liability environment which has lost any reasonable relationship to either negligence, proximate cause or measurable damages.

Recognizing the limitation on the time of my prepared remarks, I want to urge this committee to concentrate on the facts and recognize that the legislation under consideration is responsive to what has become in a very short time an enormously serious and damaging problem.

You will hear manufacturers and insurance carriers blaming the legal system. You will hear plaintiffs' attorneys blaming the manufacturers and/or the underwriters, and you will hear consumer groups blaming all three for the skyrocketing costs of insurance coverage.

I urge you, however, to direct your full attention to the facts because, whatever the reason or whoever is to blame, the following comments are an accurate summary of the current crisis.

One, 25 years ago the theory of strict liability was applied in very few jurisdictions and only in tightly defined cases where the defendant exercised essentially total control of the product. Today, strict liability is broadly applied in practically every State, and as a result the burden of proof in civil litigation has shifted from the plaintiff to the defendant.

Two, under common law a manufacturer is expected to utilize the technical knowledge and skills that were known at the time of manufacture, but in the current legal environment we are often judged under today's standards for aircraft produced long before these standards were known or were practiced.

Three, as several others have mentioned this morning, aviation is an industry highly regulated by the Federal Government. Aircraft are certified, manufactured and maintained in accordance with Federal standards. Pilots are licensed under Federal regulations. All aircraft fly in an air traffic system which is regulated and controlled at the Federal level.

Four, aircraft, because of the care in their design, are used for many, many years. As a result, there are literally thousands of aircraft that were built 30, 40, and even 50 years ago flying in this country. Because there is no Federal statute of repose with respect to aircraft and because access to the courts is virtually unrestricted, the manufacturer is held responsible for the cost of product liability insurance for its aircraft forever. In Cessna's case, for example, we carry the burden of product liability insurance for more than 100,000 airplanes.

Five, most aircraft are flown between 200 and 500 hours per year. On average, an airplane is traded about every 3½ to 4 years. This means that on average a 12 year old airplane will have had at least three owners, two and possible three major engine overhauls, and if all owners have been prudent, will have been subjected to literally hundreds of maintenance procedures by any number of mechanics and service facilities, all of which are out of the control of the manufacturer.

Six, traditionally aircraft manufacturers are insured on an occurrence basis, which means that the insurance carrier for calendar year 1986 is responsible for defending every claim which develops from an accident this year, regardless of when the aircraft was manufactured. It has been Cessna's experience that a major portion of claims arise from accidents involving aircraft which are more than 10 years old.

In fact, two of the largest jury verdicts against Cessna in the last 3 years and the only cases involving significant punitive damage awards involved, in one case, a new pilot flying a 14 year old remanufactured airplane, and in the other, a man from Milwaukee had purchased a 26 year old Cessna 195 in Tampa, a model which had been out of production for 25 years. He purchased the aircraft as is after making a brief walkaround inspection. After waiting several days for a hard rain to clear up and without draining the fuel tanks for water, he took off.

Predictably, his engine quit shortly after takeoff, and the airplane crashed without harm, by the way, to the pilot. During its investigation, the NTSB found a considerable amount of water in the tanks. In a subsequent lawsuit, although the pilot was found 5 percent negligent for

failing to drain water from the tanks, a procedure which he admitted he was well aware of and should have done, by the way, Cessna was found 95 percent liable for failing to update the manuals on this 26 year old airplane and define the quick drain procedures. The punitive damage award was \$1 million.

Seven, the cost of insurance which is borne by the manufacturer and which must ultimately be passed on to the consumer has become outrageous. Cessna's total cost for product liability insurance in 1983, just three years ago, was \$7.3 million, or an average cost of about \$5,000 per aircraft sold.

In 1986, product liability insurance will cost us almost \$50 million, or more than \$90,000 per aircraft sold. Even worse, if you can imagine it, is the strong probability that if a realistic solution is not implemented promptly, it may be impossible to acquire insurance at any price.

Having presented this summary of the most relevant facts, we urge you to consider them carefully and move forward with a prompt and thorough evaluation of the General Aviation Accident Liability Standards Act of 1986. We think you will find, as virtually all in the industry have found, that it is a reasonable bill which is responsive to all parties.

Two sections of that bill are especially important. First, aviation litigation should be in the Federal court system and should be governed by a set of uniform standards.

Second, the 12 year statute of repose will enable the manufacturers to measure the scope of its risk without unfairly hurting the consumer. By the way, if we had a 12 year statute today, Cessna would still be responsible for more than 60,000 aircraft.

The other provisions of the bill are also important. They are reasonable, and in our view they balance the interests of everyone in the industry.

Before closing, I would like to stress to you that we, as manufacturers, are not trying to avoid the responsibility for our products. At times we make mistakes, and when we do we expect to be held responsible for those mistakes. This legislation does not change our responsibility. It simply prescribes reasonable limits and uniform standards to measure that responsibility.

I appreciate this opportunity to comment on the most damaging issue which has ever confronted general aviation. Left unchecked, product liability costs will destroy this industry, and I believe the facts in that respect speak for themselves.

Thank you very much.

Senator KASSEBAUM. Thank you very much, Mr. Meyer.

Mr. Sontag.

Mr. SONTAG. Thank you, Senator Kassebaum.

My name is Rick Sontag. I am president of Unison Industries in Rockford, IL. We employ about 100 people in the manufacture of magnetos and other ignition components for small piston engine airplanes. Magnetos supply the spark to run the engine of the plane, so chances are if you have ever flown in a small plane, your engine was kept running by our products.

Our business is no different from the other hundreds of small businesses which supply components to the general aviation industry. We do not have staff specialists to handle product liability claims or insurance. In fact, our vice president of marketing and I are the litigation department at Unison, and we are both heavily involved in all of our claims.

Over the last 6 years, I have personally been involved in 15 major lawsuits and over 50 major damage claims which were settled without litigation. In the last several years, our company has been sued in shotgun lawsuits where as many as 50 defendants were named. We have also been sued when the damage was the responsibility of the aircraft mechanic. We have been sued when the pilot was clearly responsible for his own death, and we have even been sued when our product was not on the airplane which caused the injury.

Of the 15 lawsuits on which I have spent considerable time, our company felt that our product could have contributed to the accident in only two of them. In 13 of the 15 lawsuits, we felt we had nothing to do with the accident. Nevertheless, we have made settlements as high as \$65,000 in addition to \$60,000 in attorneys fees just to buy our way out of a single lawsuit.

The impact of all this litigation and threatened litigation on our company has been severe. As you are aware, the general aviation industry is severely depressed, due in large part to product liability. Because of the drop in our business, our company employs less than 50 percent of the people we had in 1979.

We have also had other financial effects from the product liability crisis. For example, our product liability insurance costs last year escalated from \$109,000 to \$250,000 per year, this in spite of our having the best year in the last several years for product liability claims and damage payouts. We cannot pass the premium increase on totally to our customers, so our operating budget had to be reduced to make ends meet.

The product liability problem has also stifled innovation in our company. A few years ago, we scrapped an advanced electronic ignition project because we were afraid to pioneer such a liability risk. Today our company will only undertake technologically innovative aircraft product development if we have the sponsorship of a larger company. We cannot afford to take the liability risk alone.

Our product liability problem also makes it difficult to obtain suppliers, since most manufacturers will not take on the risk of making a product which goes on an airplane. In fact, due to the difficulty in obtaining suppliers, we have been forced to make most of our components ourselves, often at higher costs.

The current product liability crisis has also created a new class of competitors for us and others. New firms have now begun to manufacture replacement parts for aircraft and aircraft components without the same rigorous testing and development as the original manufacturer. Many of these companies carry no product liability insurance and have a business plan to go bankrupt in the event they are faced with a large

product liability judgment. One such firm was recently granted FAA approval to make parts for our magnetos. In addition to raising our own company's product liability exposure, this company's inability to satisfy a judgment could leave some injured party holding an empty bag or pursuing an innocent party such as us to get compensation.

The worst impact on our company is the distraction of our management to matters of litigation and potential litigation and the loss of valuable management time. In a major lawsuit, it is not unusual for our key managers to spend over 20 percent of their time in depositions, requests for production and other matters associated with the suit. A small company survives partially by its ability to take quick actions and move rapidly in the marketplace. With our company's managers and engineers tied up frequently in product liability matters, our company is gradually losing this edge.

The current system is unfair. In our case, all a plaintiff's attorney needs to sue us is any reasonable theory that the plane could have crashed due to engine failure. A witness hearing an engine sputter or the assertion that the engine could have lost power due to magneto problems is enough in most states to bring a lawsuit against our company.

Once our company is named in a lawsuit, we estimate we will pay a minimum of \$10,000 in either litigation settlement or attorney expense, even if our product has nothing to do with the accident. The stakes get even higher when the suit looks like it will bring a large jury verdict.

With the deck stacked against us in the form of joint and several liability, strict liability and rules disallowing logical arguments such as existing state of the art technology, we and our insurers often succumb to the extortion of plaintiffs' attorneys rather than risk the cost of litigation and unpredictable juries to prove our innocence. Most other companies take the same position, and the plaintiffs' attorneys know it.

Some people feel the situation can be improved by simply regulating the rates charged by insurers much the same way the government tried to control inflation during the 1970s with wage and price controls. Not only does it make no sense to regulate insurance company incomes with the stroke of a pen, but in our industry it would do no good.

There are less than ten major underwriters of aircraft product liability insurance worldwide, and half of those are not in the U.S. There are fewer than five major reinsurers of aircraft product liability insurance, and they are all in Europe. U.S. price controls cannot regulate a marketplace which is dominated by overseas companies with no U.S. presence.

Our insurance underwriters tell us that the foreign insurance groups have demanded extraordinary premium increases due to the unpredictability of the U.S. legal system. The size of damage awards in aircraft product liability is growing dramatically, and the underwriters are losing money. They felt they had no choice but to raise rates.

If we want aircraft product liability insurance rates to stabilize or come down and if we want small aircraft component manufacturing companies such as ours to get back to the business of innovating and building America, we must change the rules regarding product liability.

Ninety percent of our market is gone, and many foreign companies who know they are safe from our legal system are drawing a bead on what is left of what once was a dominant U.S. industry.

Time is running out. We cannot wait for a general bill to travel the long path that the original S. 100 did. Senator Kassebaum's amendment changes the most inequitable features of the law regarding general aviation. I and most small aviation component suppliers feel we need this legislation now.

Thank you.

Senator KASSEBAUM. Thank you very much, Mr. Sontag.

Mr. Walsh.

Mr. WALSH. I am James S. Walsh, president and chief executive officer of Beech Aircraft Corporation, Wichita, KS. We are primarily in the business of manufacturing light aircraft for the general aviation market. Beech Aircraft has been producing business aircraft since 1932.

Product liability has been a serious problem in this industry since 1970, but in the last 3 years it has become a crisis, one which threatens literally to destroy the industry and to frustrate the national purpose expressed in the Federal acts which regulate the aviation industry and promote aviation as an essential part of the national transportation system and the defense capability of this country.

The industry itself is not the only segment of general aviation affected. In addition, insurance premiums for aircraft owners have reached new levels, and some of our owners and pilots are experiencing difficulty in obtaining liability coverage at any price.

The following industry and Beech figures will serve to illustrate the proportions of the current crisis. The cost burden imposed by inconsistent and unpredictable product liability laws means that the industry must sustain a burden of approximately \$150 million each year to finance uninsured exposure and insurance premiums.

Product liability cost increases have been a major contributor to a rapid increase in the cost of general aviation aircraft over the past 5 years which has resulted in a sharp decline in aircraft sales.

Since 1981 sales have declined by more than 80 percent. In other words, in 1986 the industry will be able to produce and sell less than 20 percent of the units it produced and sold in 1981. The market is adversely reacting to the perception that our products are overpriced. It is clear that a significant contributor to our industry's plight is the rapidly escalating cost of product liability.

On January 1, 1984 Beech was faced with a product liability lawsuit, asserting claims for \$447 million. This claim overhang increased rather steadily throughout 1984-85 and the first five months in 1986. On May 31 of this year there were product liability cases pending against Beech, claiming a total of \$1,150,000,000.

In 1986 Beech expects to sell about 300 airplanes to the world marketplace. Our 1986 costs for insurance premiums is about \$24 million. Each unit Beech sells this year must bear \$80,000 in insurance premiums.

The consequences of the decline in aircraft sales for us and for the industry are severe and widespread. The following are examples. In 1980 Beech employed a total of 7,600 persons in its principal manufacturing facility at Wichita, KS. Current employment at the Wichita plant is 4,900.

In 1980 Beech operated manufacturing facilities in Salina, Liberal, Wichita and Newton, KS, Boulder and Longmont, CO, and Selma, AL. The Beech plants in Liberal and Newton are closed. Our plants in Selma, AL and Longmont, CO are in the final stages of being closed. Manufacturing operations in Boulder, Salina and Wichita have been reduced.

In 1980 Beech manufactured several models of light single-engine trainer and owner flown airplanes, as well as light twin aircraft at our Liberal, KS plant. With the closing of that facility, the production of these models was suspended with no short-term plans to resume their manufacture. The reason is quite simple. Except for the light twin before the current liability crisis, the total cost of the small single-engine owner flown airplanes was less than the average per unit product liability cost we face in 1986.

During the past several years, we have lost with increasing frequency suppliers of parts, components and systems essential to the manufacture of finished airplanes. In Beech's case, some 100 suppliers are no longer doing business with us.

Increasingly, small manufacturers are unable to purchase insurance coverage, and they either elect to cease business or eliminate aviation products from their operations. Larger suppliers who can obtain insurance coverage find that the cost of product liability insurance for aviation products is disproportionate to their insurance costs for other products, such as automotive components and parts, sometimes by a factor of several hundred percent. As a result, they are dropping aviation products and components from their product lines.

In many instances, alternate resources are not available from domestic manufacturers, and we are confronted with a choice of purchasing imported manufacturing goods or, in some instances, we must produce the product in-house, at a much higher cost. Because of this development, we are now actually exporting our technology to foreign nations eager to develop their own general aviation manufacturing capability.

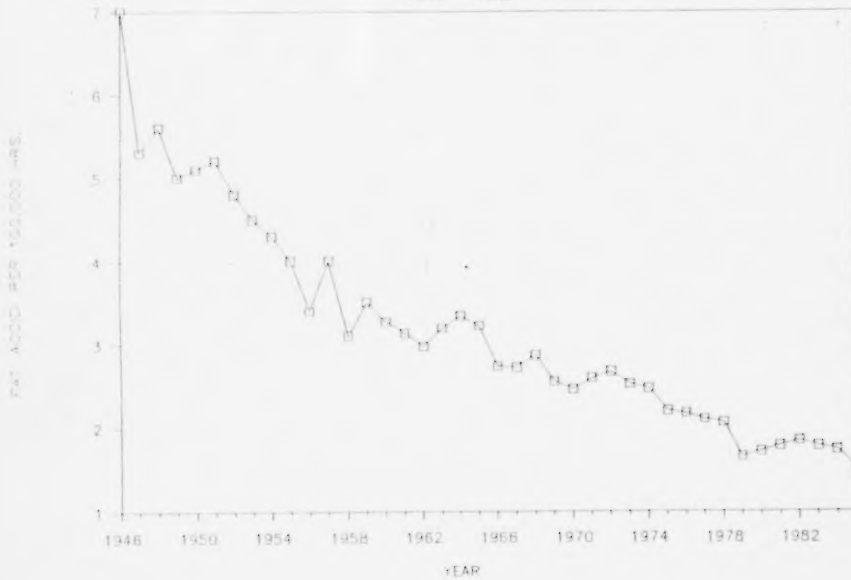
I do not wish to extend my remarks and impose upon the time allocated to other witnesses, but there are two additional points which I would like to make.

The design, manufacture and maintenance of general aviation airplanes has been intensely regulated by the Federal Government since the beginning of aviation in this country, with the primary objective of air safety.

The following chart shows the general aviation fatal accident rate from 1946 to 1983. The Federal regulatory system and the efforts of the industry have been successful in producing increasingly safe general aviation products. The statistics show a continuing improvement in general aviation safety. Yet product liability costs continue to escalate.

GENERAL AVIATION FATAL ACCIDENT RATE

1946 - 1985



Source: NTSB

In 1978 Beech concluded a study of the efficiency of the current tort system under State law as a reparation system to compensate persons who were injured or the survivors of persons who were killed in Beech airplanes. We found that of total amount we spent each year in the defense of our products and the settlement of claims, only about 16 percent ever reached the hands of anyone injured or survivors of persons killed in our airplanes. The rest of the money is consumed by courts, attorneys, insurance companies, and other parties involved in litigating cases. It is not unusual for Beech and its insurers to spend \$1 million in the successful defense of a single case.

The amendment before you has received careful study by the entire industry and its consumers. I believe it to be a moderate and fair piece of legislation which will make a real contribution to the salvation of the industry, without disadvantaging anyone who may have a just product liability claim against the manufacturers in this industry.

Thank you for the attention.

Senator KASSEBAUM. Thank you, Mr. Walsh.

Mr. WYMA, when I introduced you I said Lear Siegler Corporation, but a very important part of that is Piper Aircraft Corporation.

Mr. WYMA. Thank you. Piper Aircraft Corporation is a major division of Lear Siegler, Incorporated, and it is a manufacturer of general aviation aircraft with a factory and principal place of business located in Vero Beach, FL. So I would like to point out to you, Madam Chairman, that it is not just a Kansas problem.

Piper has been engaged in the manufacture of aircraft since the 1930's, and many of the aircraft sold by Piper over 40 years ago are still flying. At present, there are approximately 75,000 Piper aircraft flying in the United States and another 15,000 in foreign countries.

Since February 1984, when Lear Siegler acquired Piper Aircraft, dramatic reductions in sales, employees, and facilities have taken place at Piper. Two years ago, Piper employed nearly 3,500 employees. Today less than one-third of those people remain at Piper.

Two years ago, Piper had four manufacturing facilities located in two states. Today a single plant remains. Most importantly, in 1984 Piper produced 664 airplanes. This year we'll build one-third of that total.

Those statistics bring us to the heart of the matter—product liability. The cost of Piper's product liability insurance has escalated dramatically over the past 3 years. In early 1983, Piper was paying insurance premiums at an annual rate of less than \$7 million, and by mid-1985 the annual rate, including a substantial self-insured retention, was over \$40 million.

Piper pays far more for its product liability insurance than it does for labor to build its airplanes, and ours is a labor-intensive industry.

As the cost of insurance has escalated, Piper has searched for alternative sources for insurance coverage. In this effort, we have explored insurance markets throughout the world. The message that comes back to Piper from these extensive surveys is that foreign insurers have lost faith in their ability to predict the outcome of tort litigation in the U.S. courts. They are not willing to risk their capital on U.S. liability risks, especially deep pocket product liability risks, and even more particularly aircraft manufacturing risk. We are badly in need of legislation which will restore order and predictability to our liability system and bring back insurers to the aviation liability market.

Piper sincerely supports Amendment 1823 to S.100. Many of the provisions of the bill will help alleviate our industry's product liability problems, reduce losses, and-or settlements, and by lightening the burden of product liability insurance premiums reduce the cost of our products to the consumers.

We believe that these goals can be achieved while still providing a fair system for compensating victims of general aviation accidents. The proposed legislation would alleviate many of Piper's problems outlined above.

Because of time, I would like to submit my testimony for the record and just hit a couple of items.

Senator KASSEBAUM. Thank you. Your full statement will be in the record.

Mr. WYMA. Thank you.

The only provision of the proposed legislation dealing with the subject of damages is in section 209, and it is Piper's position that this provision does not fully address the principal issues confronting our industry, such as the large verdicts without consideration of net economic losses being awarded by juries throughout the United States.

Our discussions with insurers throughout the world have told us that the potential for run-away jury verdicts in the United States courts are the single greatest deterrent to participation of international insurers in a U.S. liability insurance market.

Damages for wrongful death frequently include elements for recovery such as loss of love and affection, loss of care, guidance and nurture, loss of consortium, grief, and loss of enjoyment of life. In cases involving catastrophic injury, pain and suffering is the principle non-economic damage element.

We do not pretend that we can measure the economic value of the loss of a human life or bodily function by catastrophic injury. We submit, however, that injuries have shown—that juries, I am sorry, have shown an inability to adequately deal with these abstract concepts and place appropriate dollar values on them.

Piper urges the committee to consider a further amendment to the proposed legislation to add a cap on non-economic damages as part of this legislation. We would suggest to the committee that a single dollar limit on non-economic damages is not essential.

For example, one limit could be set for serious injury and death cases and a second limit, presumably higher, for catastrophic injuries which relate the victim to a life of custodial care and continuous pain and suffering.

For instance, a case of concern to Piper is a case of *Yowell v. Piper* in the Texas state court. In that case, Piper was held liable for the death of four passengers in one of its planes. The total award was for more than \$9 million, of which over \$6 million was for the non-economic damage element.

The actual calculation of the breakdown is in my submission. But I would like to call your attention to one element. Two million dollars was awarded for the fright experienced by the decedents for the few seconds prior to the crash, \$2 million.

So we urge that this subcommittee consider further amendments to the pending legislation to address this pressing need for reform of a system that is out of control by reducing the amount that juries can award for non-economic losses.

Thank you very much.

[The statement follows:]

STATEMENT OF ROBERT J. WYMA, GROUP VICE PRESIDENT, AIRCRAFT GROUP, LEAR SIEGLER, INC.

Piper Aircraft Corporation, a major division of Lear Siegler, Inc., is a manufacturer of general aviation aircraft with a factory and principal place of business located in Vero Beach, Florida. Piper has been engaged in the manufacture of aircraft since the 1930's, and many of the aircraft sold by Piper over forty years ago are still flying. At present, there are approximately 75,000 Piper aircraft flying in the United States and another 15,000 in foreign countries.

Since February, 1984, when Lear Siegler acquired Piper Aircraft, dramatic reductions in sales, employees and facilities have taken place at Piper. Two years ago Piper employed nearly 3,500 people. Today, less than one third of those people remain at Piper. Two years ago Piper had four manufacturing facilities located in two states. Today a single plant remains. Most importantly, in 1984, Piper produced 664 airplanes.

This year, we'll build one-third of that total. Those statistics bring us to the heart of the matter—product liability.

INSURANCE

The cost of Piper's product liability insurance has escalated dramatically over the past three years. In early 1983, Piper was paying insurance premiums at an annual rate of less than \$7 million, and by mid-1985, the annual rate (including a substantial self-insured retention) was over \$40 million. When these figures are considered in conjunction with the contemporaneous decline of the general aviation market to less than 2,000 units per year, the impact of this increase is apparent. Piper pays far more for its product liability insurance than it does for labor to build its airplanes and ours is a labor-intensive industry.

As the cost of insurance has escalated, Piper has searched for alternative sources of insurance coverage. In this effort, we have explored insurance markets throughout the world; historically, London insurers have played a major role in the aviation insurance market. The message that comes back to Piper from these extensive surveys is that foreign insurers have lost faith in their ability to predict the outcome of tort litigation in the United States courts. They are not willing to risk their capital on U. S. liability risks, especially "deep pocket" product liability risks, and, even more particularly, aircraft manufacturing risks. We are badly in need of legislation which will restore order and predictability to our liability system and bring back insurers to the aviation liability market.

AMENDMENT 1823 TO S. 100

Piper supports Amendment 1823 to S100. Many of the provisions of the bill would help alleviate our industry's product liability problems, reduce losses and/or settlements, and by lightening the burden of product insurance premiums reduce the cost of our products to the consumers. We believe that these goals can be achieved while still providing a fair system for compensating victims of general aviation accidents. Before discussing the benefits of the proposed legislation, let me first explain Piper's liability exposure under existing law, most of which has been "legislated" in the courts over the past twenty years.

The factors which most profoundly influence Piper's exposures are the following:

A. Piper produces a product which has a long useful life. Many of the original Cubs produced in the '30s and '40s are still flying today, and, occasionally, when an one of these crashes, Piper gets sued. Even more frequently when an aircraft produced in the '50s and 60s crashes, Piper is sued. Currently the average age of the Piper fleet is over 20 years.

B. Some segments of the general aviation industry are underinsured for today's litigious society. While average verdicts for wrongful death have escalated over the last ten years from a quarter of a million dollars to one million dollars, and jury verdicts for catastrophic injuries can range from \$2 to \$10 million; we frequently see pilots, owners, operators, and repair stations with little or no insurance. The great majority of aircraft are operated with no more than one hundred thousand dollars of insurance to pay for a passenger's catastrophic injury or death. The result has been that manufacturing "deep pockets" have come under increasing pressure because they are the only ones involved with the ability to pay the potential verdict.

C. Expanding concepts of liability, burden of proof and evidence have made it increasingly difficult to defend products, particularly products made ten to fifteen years ago. Old aircraft are judged by current standards: human factors, design induced error, crashworthiness and other liability theories.

D. Some aircraft involved in accidents are operated in violation of federal regulations and manufacturers' recommendations for maintenance and repair. When modifications to improve the safety or reliability of aircraft operations have been recommended by manufacturers - and even when they are mandated by federal regulation - we find that operators frequently fail to perform the necessary modifications. Repair stations, charged with the responsibility for insuring that federally mandated modifications have been complied with, sometimes fail to discharge that duty during periodic inspections.

The proposed legislation would alleviate many of the problems outlined above:

1. Section 205(b)(1) incorporates limitations on strict liability of a manufacturer based upon reasonably feasible engineering and manufacturing practices at the date of certification for design defects, and date of manufacture for manufacturing defects. This represents a significant step forward from the current situation where twenty year old aircraft often are judged by current standards even though the government has not mandated any changes. That section also provides that the manufacturer should not be held liable for any defect for which he has notified the owner a reasonable time before the accident and recommended action to correct the defect.

Our legal system must place the blame where it properly belongs, and people who operate aircraft in a known defective condition must assume the responsibility for their actions. This provision would truly promote safety by encouraging manufacturers to devise warnings and modifications for the aging fleet of aircraft as experience grows with mechanical reliability, and trends are detected for the misuse of the product by operators.

2. Section 206, would provide that aviation liability be governed by comparative responsibility. This would inject into our system a standard of fairness which has been absent in recent years. Thus, under the proposed legislation, each party would be responsible only for its own share of fault. An exception applies to an airframe manufacturer which would be held liable with its suppliers for any defective components.

We estimate that in most of the cases currently pending against Piper, the party principally responsible for causing the accident is not able to respond financially to a potentially large award. If society has a problem with under-compensated victims, then society should provide a remedy; merely imposing the burden on manufacturers is not an acceptable solution. The concept that manufacturers can spread the loss over next years' production is no longer workable (if it ever was).

The impact of joint and several liability on aviation litigation is pervasive. You will not find it in jury verdict statistics; by the time of trial, the guilty—but underinsured—party is rarely still involved in the action. This is because that party has settled for the inadequate limits available and, under the applicable rules of most jurisdictions, the degree of fault of the settling party is not adjudicated.

The real impact of joint and several liability is in settlements. Over ninety percent of all cases are settled before trial; it is in the settlement negotiation that the manufacturer is confronted with the potential consequences of joint and several liability with co-defendants unable to pay their share. The possibility of even a 1% allocation of fault, under ever expanding concepts of liability recognized by the courts, has resulted in many millions of dollars paid in settlements by manufacturers or their insurers, far in excess of any potential fair share of fault.

3. By imposing a twelve year statute of repose, this legislation would inject a note of sanity into aviation litigation. Aircraft which are more than twelve years old have been maintained, repaired, overhauled, and, often modified in many ways. While many of these are well-maintained, others are very poorly maintained, and often they are insured at minimal levels.

4. Section 208, by preventing evidence of subsequent remedial measures, will also alleviate a serious liability problem for aviation manufacturers. It has been a common practice, for some time now, for plaintiffs to assert that an accident would have been avoided if some modification had been incorporated in the accident aircraft. Although the accident cause is often grossly unrelated to the subsequent measure, the manufacturer is placed at an unfair disadvantage in asserting that his product was not defective while confronted with evidence that it was subsequently changed. The admissibility of subsequent remedial measures has had a major adverse impact on the normal development of products. It is not that manufacturers are failing to take necessary action when a defect is identified; rather, manufacturers are reluctant to make unnecessary changes in their products, and the normal process of product improvement is being greatly impeded.

DAMAGES

The only provision of the proposed legislation dealing with the subject of damages is Section 209. This section provides that in calculating damages the effect of taxes on lost income is admissible. It is Piper's position that this provision regarding damages,

while helpful, does not fully address the principal issue confronting our industry, i.e., the large verdicts, without consideration of net economic losses, being awarded by juries throughout the United States. Our discussions with insurers throughout the world have told us that the potential for runaway jury verdicts in the United States courts are the single greatest deterrent to the participation of international insurers in the U.S. liability insurance market. Unless something is done to restore verdicts down to rational levels, the liability insurance burdens on aviation manufacturers will not be alleviated.

Over the last ten years, the average jury verdict for wrongful death has increased from a quarter million dollars to one million dollars. This increase far exceeds the increase in economic indexes during the same time period; the conclusion is inescapable that the profusion of high jury verdicts is attributable to the non-economic aspects of jury damage calculations. Damages for wrongful death frequently include elements for recovery such as loss of love and affection, loss of care, guidance and nurture, loss of consortium, grief, and loss of enjoyment of life. In cases involving catastrophic injury, pain and suffering is the principle non-economic damage element, but courts allow injuries to consider such losses as loss of physical function, loss of sexual function, humiliation, embarrassment, etc.

We do not pretend that we can measure the economic value of the loss of a human life or bodily function by catastrophic injury. We submit, however, that juries have shown an inability to adequately deal with these abstract concepts and place appropriate dollar values on them. Indeed, it is the propensity of juries to fill in large numbers in the "blank checks" provided by non-economic loss claims which has brought the system to the very brink of disaster. In view of this, Piper urges the committee to consider a further amendment to the proposed legislation to add a cap on non-economic damages as part of this legislation.

Almost all tort reform proposals of recent vintage have incorporated some provision for limiting non-economic losses. As this committee well knows, the recent proposal by the Reagan administration, submitted by Senator Kasten, calls for a \$100,000 cap on all non-economic damages, including punitive damages. Legislative activity within the States has included caps on non-economic damages, particularly in medical malpractice cases, e.g. California. Our own state of Florida, recently passed a tort reform bill including a cap on non-economic damages.

We do not make a specific proposal at this time as to what the committee should set as the limit for non-economic damages. Obviously, the various state precedents should provide some guidance. Moreover, we would suggest to the committee that a single dollar limit on non-economic damages is not essential. For example, one limit could be set for serious injury and death cases, and a second limit, presumably higher, for catastrophic injuries which relegate the victim to a life of custodial care and continuous pain and suffering.

A case of concern to Piper is the case of *Yowell v. Piper* in the Texas state court. In that case, Piper was held liable for the deaths of four passengers in one of its planes. While the liability issue was contested, I wish to here address the impact on that award of the non economic aspects of the damage calculation. The total award was for more than \$9 million of which more than \$6 million was for the non-economic damage elements. The actual breakdown of the jury verdict is as follows:

Economic Losses

Loss of care, maintenance, support, service, advice, counsel, protection and contributions, including loss of inheritance:

by the widows (4) — 1,303,945.69

by the children (7) — 303,945.69

by the parents (4) — 137,257.46

Total economic loss— 2,745,148.84

Non-Economic Losses

Loss of companionship, society and affection.

by each wife (4) x \$250,000 = 1,000,000

by each child (7) x \$250,000 = 1,750,000

by each parent (4) x 100,000 = 400,000

Loss of nurture by each child (includes education, care, advice, counseling and the religious, moral and intellectual training of a child) (7) x \$125,000 = 875,000

Mental anguish of each decedent (pre-impact fright) (4) x \$500,000 = 2,000,000

Total non-economic damages \$6,025,000

Curiously, Piper was advised by its insurers, when the case was settled before all available appeals had been exhausted, that a retrial in an even the Texas courts had "legislated" additional elements of damage calculations which could have the potential jury verdicts in these cases even higher.

We submit that it is cases like *Yowell v. Piper* which have participants from the liability insurance market and created the crisis in liability insurance which Piper currently faces. We urge this subcommittee further amendments to the pending legislation to address this pressing need reform of a system that is out of control by reducing the award for non-economic losses. Thank you.

Senator KASSEBAUM. Thank you very much, Mr. Wyma. We appreciate the testimony of everyone.

It is a pleasure to welcome Senator Inouye, who has expressed a great interest in this legislation, and I hope support. Do you have any comments before we begin the questions, Senator Inouye?

Senator INOUE. No, thank you, Madam Chairman.

Senator KASSEBAUM. I will start with a few. First let me just say I think the testimony of everyone certainly paints a dramatic and very stark picture of what the general aviation industry as a whole is facing. It is a concern in the broader extent of the whole liability issue, but you have pointed out the uniqueness of what is facing this industry.

I will address several questions to the whole panel and anyone wishing may answer. Do you believe this legislation will help and, with all the claims that are outstanding, do you see this as immediate help, or if not, then in what time frame? What specifically do you believe will be the most help in this legislation?

Is it a uniform standard? Anyone may answer.

Mr. MEYER. Well, I will start. I think certainly it is a bill which will help us in the future. It will have no bearing, I am sure or I would suspect, on cases which are currently pending or anything which is in the courts today.

I think, as we have emphasized, the uniqueness of the industry really requires a Federal standard, rather than 50 different laws in 50 different States, which sets us apart from the general bill.

The statute of repose is a terribly critical aspect, again whether it is 10 or 12 or 15 years. We have all looked very hard at what is a reasonable time frame. In fact, we thought eight was probably the most reasonable and we, to be conservative, took 50 percent of that and would recommend a 12.

There would be some, I think approximately 100,000, airplanes still covered if we had a 12-year statute of repose. But one of the problems in our industry, as we indicated early, it is an advantage and a problem, is that we build airplanes very well, very carefully, and according to Federal standards, and they last a long time.

I have flown airplanes that are 54 years old, and if they are maintained properly and flown properly there is no problem. However, in general the older the airplane, the less the care, normally the less skilled the pilot, and to carry the burden of product liability for—we could give you lots of examples of airplanes that are 30, 40, or 50 years old.

Almost 50 percent of our insurance claims in the last year at Cessna resulted from airplanes that were more than 20 years old. And the so-called long tail of these in the insurance business of airplanes of this kind being liable for so long—as I said, we're on an occurrence basis, so when we buy an insurance policy today for occurrences in 1986, it has to cover airplanes that were built 40 or 50 or 60 years ago.

The other aspects which Bob and Jim and Rick have all mentioned are equally important in that bill. But at least from our standpoint, those two are terribly important and would have—while it would not make a major change immediately in the product liability outlook, would certainly enable us to measure our damages a little bit more accurately, would prescribe some limits around that liability, and would be a great help in not only acquiring insurance, but affecting the rates in the long term.

Mr. WALSH. I would like to comment to the joint and several liability aspect of the bill. The joint and several liability does a couple of things. I think it incentivizes the lawyers, the plaintiff lawyers, because of the so-called deep pocket theory that results from the joint and several liability.

It incentivizes large awards. The juries know that the person who is going to pay the bill or the corporation that is going to pay the bill is insured with hundreds of millions of dollars, so awards escalate as a result of that knowledge by the juries.

I think if they realized that every responsible party in the loop would pay a proportional share of the cost and therefore if the pilot were responsible or the mechanic were responsible in part, that they would be paying a share of the total judgment, I think we would see juries handing down much more reasonable judgments.

The other factor of joint and several liability is it puts us in partnership with people we do not know and do not have any contact with, do not have any influence over. We think that we should be jointly liable with all the manufacturers who supply any components that go in our airplanes, so we should be jointly liable with Rick here for the parts we use, his parts we use in our airplane.

But we do not think we should be jointly liable with a mechanic who we have never met, who we do not know how skilled he is or how trained he is. But under today's law we are in partnership with him. We are jointly liable, and if he does not have any insurance coverage we end up paying the bill even if it was his fault.

And we are jointly liable with the pilot, most of whom we do not know and have not met, do not know what kind of training the pilot has. And if he commits an error in judgment that results in an accident, we are held jointly liable with him.

That seems to us to be just plain unfair, that the manufacturer should be held in partnership with these people we have no control over and no influence over.

Senator KASSEBAUM. All of you have spoken very dramatically about the escalating costs and the awards. Is there any difference in the last, say, 5 years? I was struck, Mr. Walsh, when you said that in 1970 the

whole question of product liability became a noticeable problem. Evidently it has escalated every year.

Do you have any figures that you can account for in claims actually paid in the last year?

Mr. WALSH. We have some data that Bob Martin has. I would ask him to talk to that subject.

Mr. MARTIN. We have collected these figures from the industry. In 1977, the industry as a whole, general aviation and its insurers, paid out \$27 million. A few years later in 1981, they paid out \$46 million. In 1983 they paid out \$76 million.

But the jump comes in 1984 and 1985. In 1984 the industry through self-insured or uninsured layers and its insurers collectively paid out \$187 million. And that is actual paid-out money in lawyer's fees, costs of litigation, judgments, and settlements.

In 1985, that figure had gone up to \$210 million. Now, there has been some talk that this is an insurance problem. It is not. It is a legal system problem. We have to realize that Beech, for example, is uninsured in the world market for the first \$30 million. We are essentially self-insured. These are our dollars that are being paid out in Beech's case.

And all of the rest of the airframe manufacturers have primary uninsured layers. The total insurance burden and uninsured layers in 1986, for example, adds up to someplace between \$130 and \$150 million. In 1985 it was about \$125 or \$130 million.

Yet, the industry paid out \$209 million or \$210 million. So predictably, those costs are going to go up. We cannot get full insurance coverage below \$50 million, and I do not think the other airframe manufacturers will be able to either when they come up for renewal.

It is that last escalation of claims that has tripled between 1983 and 1985 and will go even higher in 1986 that is killing the industry.

Senator KASSEBAUM. Well, Mr. Martin, you are a highly respected attorney. Why has this happened? Back in 1977 the industry paid \$27 million and over the last 10 years there has been enormous escalation of this cost. Why?

Mr. MARTIN. Because, in the case of this industry—

Senator KASSEBAUM. We have the same tort system.

Mr. MARTIN. We have the same tort system, but it is rapidly changing.

Senator KASSEBAUM. How?

Mr. MARTIN. And it is out of control.

Senator KASSEBAUM. Well, why? Why is it changing? Is it because of the way the lawyers are using the system, or the judges or the juries?

Mr. MARTIN. Yes. I believe as a practicing trial lawyer, which I have been for almost 40 years, that you don't really have run-away juries. You have run-away courts and lawyers.

We have 50 jurisdictions here judging these products against Federal standards. They are all different. And we have a high percentage of cases that just simply get out of control, and that produces these enormous verdicts.

There is another set of figures that points up why this industry is different and why it is in trouble. The National Jury Research Group came up with a figure that said that in 1985—correction, 1984—there were 84 multi-million dollar verdicts. We know that general aviation had 16 of those.

Now, general aviation—these are product liability verdicts only. Now, of the total industrial complex in the United States, general aviation is probably 1 percent or less of all the manufacturers exposed to product liability claims.

Yet, we had 16 percent of the multi-million dollar verdicts. Our cases get out of hand faster than others. Sudden death in an aircraft is of course, as someone said here, a traumatic thing. And there are a lot of reasons.

But in my view, it is an uncontrolled legal system. That is what the problem is, and it particularly hurts us because it is superimposed on the cost and expense of intensive Federal regulation. That is why we think Federal control of this exposure is necessary.

Senator KASSEBAUM. Well, I understand that. It seems to me it is important to understand, because we have always had this legal system in place. There is not a greater number of accidents, as a matter of fact, in general aviation.

So it seems important to understand why all of a sudden this escalation? Why in the sixties, when there was the same set of state standards and Federal regulation and the court system was the same, did this not take place?

Mr. MARTIN. The laws were not the same. We have the law swiftly changing in most of these jurisdictions. It is radically different than it was in the sixties.

Senator KASSEBAUM. You mean the State laws and the State regulations applied?

Mr. MARTIN. The State laws. I mean, it would take the rest of the day to outline some of the changes. But they are—basically, what has happened in the last 10 years is that manufacturers of aviation products at least are presumed to have been the cause.

We have the burden of proof. The joint liability problem is a horrible problem to us. We have plaintiffs' lawyers saying to us: I know that the pilot caused this wreck, but I might be able to tag you for 2 percent, and if I do you are going to pay all of the judgment. We hear that over and over again.

That is a problem here. These crashes attract activity in the legal system because they are high award, potentially high award cases.

Senator KASSEBAUM. In 1978 Beech did a study, did it not?

Mr. MARTIN. It did.

Senator KASSEBAUM. Out of that study did you get any figures on costs and how much of awards actually reached the plaintiff?

Mr. MARTIN. Yes.

Senator KASSEBAUM. Are there any figures?

Mr. MARTIN. I think Mr. Walsh mentioned those figures in his presentation.

Senator KASSEBAUM. That is right.

Mr. MARTIN. But the answer we came up with in 1978—and I do not believe it is any different today, and I do not believe it is any different for Beech than it is for Cessna or Piper. The answer was that 16-2/3 cents out of every—only 16-2/3 cents out of every dollar we spent pouring into the defense system in buying insurance and paying and making arrangements to pay claims and costs of defense, only 16-2/3 of that ever reached the hands of anybody injured in our products.

That means that all of the rest was consumed within the system: lawyer's fees, engineering fees for expert witnesses, court costs, deposition costs, travel. It is an enormously inefficient system, because we have a system that has been here for 800 years, originating in England, designed to find fault.

But we are not really doing that any more. We are trying to move toward an absolute liability system where the manufacturer pays for everything, and we in aviation are out on the front line of that.

That is a quick summary.

Mr. MEYER. I would like to add a couple of comments to that, and I agree with everything that Bob has said. Just to give you an idea, 15 years ago or, let us say, in 1970 when this became an issue in the general aviation manufacturers, when we had substantially more accidents than we have today, we had I think 25 percent fewer lawsuits.

Speaking for Cessna, we are carrying a trial load of almost 600 claims. 15 years ago we had less than 50. And there are lots of reasons for that. I can almost guarantee you that in every single accident, regardless of the cause, whether the pilot was qualified or drunk or sober or flying VFR or IFR, if there is an accident and somebody is hurt or injured a lawsuit will be filed invariably, on any number of theories, whether it is a fuel system or an avionics problem or an electrical system.

There will be a lawyer who will take that case and file a claim of some kind, generally against the engine, the avionics, the aircraft manufacturer, the mechanics, the fixed base operator, the pilot, et cetera, to try to find a way to get some sort of an award for the pilot or passengers on that aircraft.

That is an enormous change from where we were 15 years ago. When I finished law school just 25 years ago, there was only one State in the country, which was California, which practiced strict liability—Judge Cardozo. It was a revolutionary change.

Today every State in the country is practicing strict liability. So that a claim can be made and in practically every case the burden is then on the manufacturer, in an accident where the airplane may be totally destroyed and no evidence there to prove or disprove, to say that this accident was not caused by whatever the allegations might be.

It is an incredible change in just 15 years.

Mr. SONTAG. I think one other thing, too, if I might add. I think in the last 5 years or so there has been a large number of editorials, a lot of publicity regarding the size of awards in aviation accidents. And I think there is an increased number of attorneys who have picked up the idea that there is a lot more money in aviation than there is in other kinds of litigation.

And we see, I know from our perspective, a lot of attorneys who have never been in the aviation litigation field entering aviation litigation in the last five years because of the size of the awards and the prospect for large damages.

And I think that certainly contributes to the increase in the cases in our industry.

Senator KASSEBAUM. I have a couple of other questions. But Senator Inouye, I would like to turn the questioning over to you first.

Senator INOUE. Madam Chairman, you should be commended for submitting this amendment, and furthermore for calling these hearings.

The last time I was in a courtroom was in 1959, and since then I have been in this courtroom here. And all I can say is it is mind-boggling. This is not what I was taught in law school.

Mr. Meyer, you cited a Texas case of a 26 year old aircraft, water in the tank.

Mr. MEYER. Yes, sir.

Senator INOUE. And a million dollar punitive damage.

Mr. MEYER. Yes, sir.

Senator INOUE. Based upon the court's finding that you should have updated your manual.

Mr. MEYER. Yes, sir.

Senator INOUE. Are automobile manufacturers required to update their owner's manual also?

Mr. MEYER. I do not know of any such requirement.

Senator INOUE. Are you now updating your manuals for 40 year old aircraft?

Mr. MEYER. We update all of our manuals for every aircraft that we keep in production. For example, we are still making—until this year, we were continuing to make an airplane called the Skyhawk, the 172, which we have been building since 1956.

Each year is a new model year for each of those, for each model of that aircraft. So that the manual will change with the aircraft each year. If there is a major change which is applicable to an earlier aircraft, an entry is made in the log of that aircraft and we have sent service bulletins and service letters to be attached to the owner's manuals.

We have never sent out—we have sent out letters and bulletins on airplanes that may be 30 or 40 years old. But we do not traditionally in our industry go out and update manuals.

In most cases of old airplanes, the owner's manuals are not even there. But the logbooks will be there, the maintenance logbooks, but the owner's manuals were very short 30 and 40 years ago, because the aircraft had substantially fewer systems.

In this particular case, the airplane—it was a Florida case—actually, it was a Wisconsin case. The accident occurred in Florida. The airplane had been out of production for 26 years. When it was manufactured in 1952, it did not have quick drains in the airplane because the industry had not experienced a problem with water in aviation fuel.

When we learned that those problems could occur in the late fifties and early sixties, all of us in the industry designed what's called a quick drain to put in the lowest port of the fuel cell, normally under the wings of our aircraft.

As a safety measure, we went back and retrofit airplanes that in this case had been retrofit after they had been out of production 17 years. Quick drains were installed in these airplanes in 1969.

The airplane was purchased in 1978, when it was 26 years old. The operator was a reasonably well qualified pilot. He was very careless. He was in a hurry. He was going to pick up his family and fly back to Milwaukee. He said: I knew I should have drained the tanks; it's standard procedure. It's especially important in Florida because of the environment and the soil, where they have a much greater problem with moisture in the fuel tank.

He did not do it. He admitted to the jury that he did not do it and should have done it. The quick drains had been installed. Service bulletins had been installed. But the jury was convinced that we should have gone back and put into all of the owner's manuals in 1952, although the airplane had been out of production for 26 years, a specific reference to quick drains, which had not been installed in the airplane.

We were willfully and wantonly negligent in their view for not having done that. And as I say, the punitive—it is an environment which is pervasive not only in our industry, but in many industries, which has changed not only the theory of negligence but also the theory of damages.

Senator INOUE. Is this not on appeal? Have you appealed this?

Mr. MEYER. I hate to take the time. The initial award was for part of the property damage—the initial jury found that everybody was negligent and they awarded to this fellow \$28,000. He was very unhappy with the \$28,000, thought he should have had more than that, and thought it should have been taken to the jury on punitive damages.

So he appealed. Normally the winner does not appeal. Normally the loser does. He appealed, and the Supreme Court of Wisconsin remanded it to the trial court and said that it should have gone to the jury on the issue of punitive damage.

So it was tried again and they had the punitive damage verdict, and it is now in the process of being appealed, yes, sir.

Senator INOUE. Some of you mentioned piston aircraft. Are jet aircraft also involved in this problem?

Mr. MEYER. No, sir, not to the extent. They are involved to a much lesser degree because the jet aircraft are certified to a different standard of Federal regulations and they are normally flown by highly professional crews, just as the airlines. So their accident record has been substantially better than that for the smaller aircraft.

The problem is that the turbine aircraft, which are the only aircraft that are selling in any numbers today, are carrying the burden of the product liability for piston aircraft that are not only not being produced, that were produced 20, 30, and 40 years ago.

Mr. WALSH. I would like to make a comment on that point that Russ just made. The person who buys an airplane today is in effect paying the insurance for all the airplanes that were built for the last 30 years or 40 years, in that the only place where the manufacturer can get the money to pay for the insurance premium is out of today's sales.

So that in effect the person who buys an airplane today is paying for airplanes, insurance on airplanes that were built 30 years ago. And that seems inherently unfair.

In addition to that, as Russ mentioned, the small airplanes are the vast majority of the cause of high awards, but obviously you cannot put a \$100,000 cost into a \$150,000 airplane. So it ends up that the \$150,000 cost is being picked up by the larger airplanes, the \$2 million, \$3 million and above airplanes.

And frankly, those customers are resisting that price increase that is resulting from that product liability cost, which is really not the responsibility of the large airplanes to start with.

Senator INOUE. The medical profession is also facing the same problems, and it has been suggested that in medical malpractice there is a concept called defensive medicine, where physicians require you to take X-rays that may not be necessary or require you to take examinations that may not be necessary, just to protect his flanks.

It has been estimated that the cost of defensive medicine exceeds \$5 billion. Do you have any defensive management or something of that sort? What would the defensive management costs be?

Mr. MARTIN. Most of the airframe manufacturers really have in a sense two engineering staffs, one to design and build the airplanes and one to defend them when they are out there. That is a hidden cost that those manufacturers pay themselves. That is not covered by insurance.

That is a huge cost, in the millions of dollars a year, to each one of the airframe manufacturers and to each one of the engine manufacturers. As Mr. Sontag explained, his company's not large enough to be able to do that.

There is not much—there is not too much defensive medicine practice in the sense of putting gadgets on airplanes that you do not need to have in order to ward off product liability exposure. That does not work in this industry.

But the hidden defense cost is the engineering staff and the time that those people have to take to respond to this deluge of cases.

Mr. SONTAG. I might add, too, that in our case, for example, where we do not have a staff, we often go to outside testing laboratories for products and pay for extra expense and engineering to have another third party source verify the engineering data. So if we get asked about the source of our information or technical expertise in a suit, we have some other third party to verify it.

And that happens very frequently. We would not be spending that money, we would not incur those costs, if it were not for the fact that we get sued so often and we get asked the questions.

Senator INOUE. Mr. Walsh, did I hear you correctly when you said that at the present time in your inventory you have an aircraft whose insurance premiums are much more expensive than the cost of manufacturing?

Mr. WALSH. Oh, yes. We have quoted earlier in my testimony that Beech's cost is say \$100,000 on the average per airplane we sell. But we obviously cannot load that \$100,000 of costs onto an airplane which we try to sell for \$150,000 or, in Russ's case, for airplanes he tries to sell for \$50,000.

He cannot load that cost onto that airplane, so it has to be paid for by the larger airplanes. So that the element of the industry that is causing the problem is really not paying the bill, and that is going to result in the elimination of piston airplanes from general aviation manufacturing in the United States.

Senator INOUE. I noticed a rather innovative legal move here, mental anguish resulting from pre-impact flight. How do they measure that? The person is dead.

Mr. MARTIN. We run into it frequently that, you know, the airplane goes out of control or the engine quits or something, and it is two minutes before it hits the ground. And you have plaintiffs' lawyers arguing that the anguish on the part of the pilot and passengers in that airplane, knowing that they are going to crash and it is the end of their life, that that two minutes should be translated into dollars.

And if a court does not restrain those kind of arguments—and they do not—clever lawyers can run that into the millions of dollars. That is part of the problem.

Senator KASSEBAUM. May I interrupt just a moment and ask, is that not somewhat a judge's responsibility, when you speak about restraining the courts? A judge can interpret and define, can he not, some of the limits and the parameters in the case?

Mr. MARTIN. Yes, he can, Senator. That is what they are up there for.

Senator KASSEBAUM. And this has somewhat gotten out of hand, has it not, as far as—

Mr. MARTIN. Somewhat, yes indeed. It is what produces these extravagant verdicts, the lack of restraint on the part of the bar and the bench both. I mean, the judges are lawyers.

Mr. WYMA. I would like to make another point on that, if I may. I think I am correct in this, but for instance, a judge cannot instruct the jury that the amount is non-taxable. So when a \$2 million settlement is awarded, he is not allowed to say, you know, after all, this settlement is non-taxable and this person was in a 50 percent tax bracket and all that sort of thing, and maybe this settlement is a little high.

Am I not correct on that, Bob?

Mr. MARTIN. You are correct. In all but about 13 States, the law is that when the economist for the plaintiff gets on the stand and computes the family loss of income, you do not take into account income

taxes. Now, they are deducted from the man's payroll and the family never sees them.

In our case, where a lot of the people on our airplanes are high earners, we are talking about doubling judgments. This is something that has been overlooked in the other bills. It is not overlooked here.

But that is part of the general environment here that leads me to say that the system is out of control. Not everybody will agree with that, I suppose.

Senator KASSEBAUM. Thank you, Senator Inouye. I appreciate your yielding. I was just curious.

Senator INOUE. Well, I learned a few things. When I get back to practice, it is going to be pre-impact losses, too.

Half a million dollars for 2 minutes?

Mr. WALSH. Two million I think was his figure.

Mr. MARTIN. Well, in this particular case I was the one that stated it. There were four people, four casualties, and each was awarded a half a million dollars, for a total of \$2 million.

Mr. SONTAG. Think what it would be for the Japan Airlines flight that flew for 30 minutes before it crashed.

Senator KASSEBAUM. Do all of you agree with Mr. Wyma's suggestion of capping non-economic damages?

Mr. MARTIN. Maybe they do not all agree.

Mr. SONTAG. I think everyone on this panel agrees with the concept of capping non-economic damages. In the legislation our feeling was that it is such a controversial issue. So to get this legislation through, which we think is very important, in an expeditious fashion, we better leave it out.

Mr. MARTIN. There is one other point that I think we should make. The framers of this bill had two ideas in mind. This industry literally is going to die if we do not get some relief. We are differently situated than others. We have to have the relief we have asked for.

We believe that some sensible cap should be found and legislated. The intent here is that whatever legislation comes along in larger bills or State bills will be applicable to aviation also. But certainly, if there is later Federal legislation putting a cap on non-economic damages, it should extend to this industry as well.

But we are willing to give that up in order to get the relief that will bring some stability to the situation and allow us to survive pending broader legislation.

Mr. MEYER. And by leaving some of those issues like that out was the way that we were able to develop, perhaps not 100 percent agreement within the industry, but as you know there are lots of other consumer groups that are supporting the legislation, and it is because we were able to keep it in a balanced fashion which really is fair to everyone.

Senator KASSEBAUM. Mr. Sontag, you spoke about the costs of defending litigation and for that reason frequently settled out of court. How do you see this legislation helping you in defending in court, or would you still believe that settling out of court would reduce your costs?

Mr. SONTAG. In our case, Senator Kassebaum, we have settled every lawsuit that I have been involved with. Every single lawsuit has been settled out of court, even the two where we thought we had some involvement.

We think, and I think the rest of the people agree, that the legislation is going to do at least a couple or three things. One, we think the frivolous lawsuits, the ones that are really created just out of blue sky—for example, we have been literally sued in a lawsuit where our product was not on the airplane. We think it will prevent those kinds of things.

Senator KASSEBAUM. Why then, out of curiosity, would you settle out of court?

Mr. SONTAG. Because in this particular instance the attorney who sued us said that they would let us out voluntarily from that lawsuit without any further cost to us if we would agree not to sue her back. So in that instance, we decided to settle out for zero, but pay \$5,000 in attorney's fees.

Senator INOUE. That is extortion.

Mr. SONTAG. It was extortion. It is purely and simply extortion.

Senator INOUE. Why do you not go to the bar association?

Mr. SONTAG. I have written letters to the bar association. I have written letters to the bar association in our State, I have written letters to the national bar association.

And my opinion is the bar association does not want to take a position on the issue. At least they have not in our case. I think there are factions within the bar association that do not agree on what is happening, and I think the bar association, like the AMA on occasion, has a tough time policing itself.

As I started to answer your question, we think the frivolous lawsuits will be reduced. We also think it is going to encourage settlements earlier than they do currently, because people are going to know what the risk is and what the maximum amount of their judgment could be. And we also think that it is going to make the awards a little more commensurate with the damages, things like non-economic damages hopefully being brought down.

In total, all three of those things should ease the number of lawsuits. It should reduce the average amount of settlements. It should make it easier to get out of a lawsuit at an earlier stage.

And I think in some of the cases that we have been involved in we may pay half or less than half of what we paid to get out of it if we do not have some of the laws that we currently have, like joint and several liability.

Senator KASSEBAUM. How does the statute proposed affect parts and components?

Mr. SONTAG. In the way that it is currently phrased, the statute of repose goes for 12 years from the date of installation of any new component. So in our case as a component supplier, each time the engine manufacturer—or, excuse me, the owner of the airplane—remanufactures his engine or replaces a magneto on the engine, the 12 years will roll forward.

So in essence, we really have a statute of repose of 12 years for the oldest component, and it rolls forward for every new component put on the airplane. We think that in our case, we have got magnetoes from the late 1950's that we produced, that were meant to be taken off the airplane after 900 hours of use. We have some of these magnetoes that have been flown 3,000 or 4,000 hours, that never should have been flown. Some of those products, on which we currently can get lawsuits and have gotten lawsuits, will not contribute to our legal liability in the future.

Mr. MEYER. That is a very important point that you raise. It is a rolling 12-year statute of repose. In other words, if we build an airplane in 1986, we would be responsible if no change were made to any part of that airplane for 12 years to 1998. However, as a normal part of our business, aircraft engines are overhauled or engines are replaced, avionics are replaced, wheels and brakes are replaced, mag needles are replaced, and the 12 years would begin each time that took place, so in a 30-year-old airplane that had a new engine installed and something were wrong with that engine would still be an additional 12 years. I think that is a very important issue that we need to make clear.

Senator KASSEBAUM. Well, I want to thank all of you very much. It was important testimony. It was very dramatic testimony. It will be an essential part of the record that I think should help us be successful in this endeavor. Thank you very much.

It is a pleasure to welcome the second panel from left to right, Clifton Von Kann, president of the National Aeronautic Association, John Sheehan, senior vice president, Aircraft Owners and Pilots Association, John Winant, president, National Business Aircraft Association, and Mr. Jensen, representing the Helicopters Association. It is a pleasure to welcome all of you. Mr. Von Kann, would you like to go first?

STATEMENTS OF CLIFTON VON KANN, PRESIDENT, NATIONAL AERONAUTIC ASSN.; JOHN SHEEHAN, SENIOR VICE PRESIDENT, AIRCRAFT OWNERS AND PILOTS ASSN.; JOHN WINANT, PRESIDENT, NATIONAL BUSINESS AIRCRAFT ASSN., INC.; ACCOMPANIED BY DAVID SCOTT; AND FRANK L. JENSEN, JR., PRESIDENT, HELICOPTER ASSOCIATION INTERNATIONAL

Mr. VON KANN. Thank you, Madam Chairman.

Senator KASSEBAUM. You are sort of the dean of the aviation representatives, and your years of testimony must add up to be quite a bit.

Mr. VON KANN. Well, I give a very short brief of my statement which has been submitted for the record, Madam Chairman. On behalf of the more than 250,000 member of the National Aeronautic Association, its divisions, chapters, and affiliates, I would like to express my appreciation for the opportunity to be here on this very important subject and the very important bill which you have introduced.

As I point out in my statement, the bill is important for many reasons. The U.S. aerospace establishment is a vital element of U.S. national power. This is what NAA is all about, trying to keep the United States first in the skies.

Secondly, the promotion and encouragement of U.S. aviation and space activity is a firm element of United States national policy. As I point out in my statement, the various declarations of policy in major aviation and space legislation leave no doubt as to that.

Third, general aviation has provided the people to man this establishment. Most all the people who lead and pioneer and innovate in both air and space—in all aspects of aerospace—have come out of general aviation, and now general aviation is in decline, in serious decline. I looked back in one of my previous talks, and in 1969 90 percent of the world's general aviation aircraft were manufactured in the United States. Now outside of business jets we are practically out of it.

Fourth, product liability, as has been amply developed by the earlier panel, is the main cause of this decline; it has seriously damaged general aviation and threatens further erosion of our national policy objectives. . . . Because if there is no general aviation industry in this country, the whole aerospace establishment will suffer, might say that these are self-inflicted wounds. We have done this to ourselves; we have thought that the problem would solve itself, and therefore we have not until now dealt with it. Meanwhile foreign manufacturers, who are relatively sheltered from product liability litigation are capturing the whole market and seizing the leadership. That, madam Chairman, is why your bill is so vital. There will no doubt be other product liability legislation because product liability is a national scourge. It is certainly not limited to aviation, but with the strong opposition of the trial lawyers and many misguided consumer advocates, omnibus legislation will take time, and it may very well be that overall tort law reform comes through State legislation, a process which is now accelerating.

But general aviation needs relief now, and its problems are sufficiently unique, as has been developed just this morning, if not before, to justify a separate bill.

For one thing, aviation needs a Federal law because it is interstate in nature and completely Federally regulated. We must get ourselves back on the track of our national policy objectives, and the bill, if enacted, will move us in this direction.

I might add one more comment, Madam Chairman, that the questions you raised about insurance and how the whole system of liability is being expanded in the courts is answered in part by the attachment to my statement, this I submitted since I wear a second hat, in that I am a director of one of the largest general aviation insurance companies in the world. We are right on the firing line, and I feel those aspects strongly. So there are in the attachment further responses to your question. I think you know what they are, but they are in there for the record. Thank you again for the opportunity.

[The statement follows:]

STATEMENT OF CLIFTON F. VON KANN, PRESIDENT, NATIONAL AERONAUTIC
ASSOCIATION

THE U.S. AEROSPACE ESTABLISHMENT IS A VITAL ELEMENT OF U.S. NATIONAL POWER

No single element has contributed as much to our military and economic strength as U.S. aerospace. On the military side, the vital importance of airpower cannot be questioned. Less obvious, perhaps, but equally true is the fact that civil aviation is a major factor in our Country's economic growth. Air transportation is essential to the development of our more remote areas. No major urban complex can thrive without one or more large commercial airports backed up by a network of reliever airports. Aerospace products have long been at or near the top of our export list. For many years they kept the balance of payments in the black; in recent years they have prevented our unfavorable balance from becoming catastrophic. Aviation has also been a key hole card in the game of diplomacy and international agreements.

Perhaps aviation's most important contribution, however, has been its facilitation of international travel. The expended ability of people to visit abroad, to meet their counterparts, to gain mutual understanding, to know first hand the problems and attitudes of others—this has been and will be a greater force for world peace than any arms limitation agreements could ever be reached. I might note in passing that NAA is conducting a series of tours to the U.S.S.R. and other Socialist countries with this goal in mind.

Madam Chairman, Members of the Committee, on behalf of the more than 250,000 members of the National Aeronautic Association (NAA), its Divisions, Chapters and Affiliates, let me express my appreciation for the opportunity to express our views on Amendment 1823 to S. 100 and the need for this legislation.

This Bill is important for many reasons:

The U.S. aerospace establishment is a vital element of U.S. national power.

The promotion and encouragement of U.S. aviation and space activity is a firm element of U.S. national policy.

General aviation has provided the people to man the U.S. aerospace establishment; now general aviation is in decline.

Product liability is the main cause of this decline; it has seriously damaged general aviation and threatens further erosion of national policy objectives.

Let me elaborate.

THE PROMOTION AND ENCOURAGEMENT OF U.S. AVIATION AND SPACE ACTIVITY IS A FIRM
ELEMENT OF U.S. NATIONAL POLICY

While there is no formal U.S. aerospace policy statement, the preambles to our Country's laws on aviation and space provide an eloquent statement by the Congress on the importance of promoting and encouraging both aviation and space. I refer specifically to:

Section 102 [72 Stat. 740, 49 U.S.C. 1302], the Federal Aviation Act of 1958 as amended.

Section 103 [72 Stat. 740, U.S.C. 1303] of the same law.

Section 2 [84 Stat. 219] of the Airport and Airway Development Act of 1970 as amended.

Section 502 [96 Stat. 671, 49 U.S.C. 2201]—the Airport and Airway Improvement Act of 1982.

Section 102 [72 Stat. 426, U.S.C. 2451] of the National Aeronautics and Space Act of 1958, as amended.

GENERAL AVIATION HAS PROVIDED THE PEOPLE TO MAN THE U.S. AEROSPACE
ESTABLISHMENT; NOW GENERAL AVIATION IS IN DECLINE

Since the Wright Brothers' breakthrough at Kitty Hawk there has been a flow of good people into the U.S. aviation establishment. The desire of young people to fly, to work around airports, to design and build airplanes and now to venture into space, these drives have never abated. Virtually all newcomers started in some phase of general aviation and then went on to become aeronautical engineers, air carrier executives, technicians, test pilots, airline pilots and, more recently, space scientists and astronauts. In short, general aviation has been the source of people to man the great U.S. aerospace system.

But the flow is slowing down. From 1980 through 1984 student starts fell at an annual rate of 8.5% while active pilots declined 3.1% each year.

From the hardware standpoint the picture is even more bleak. Except for business jets, general aviation manufacture has all but disappeared in the United States. One need only look at Cessna's recent withdrawal from piston plane production to realize what has happened to the industry that in 1969 was producing 90% of the world's general aviation aircraft.

PRODUCT LIABILITY IS THE MAIN CAUSE OF THIS DECLINE; IT HAS SERIOUSLY DAMAGED GENERAL AVIATION AND THREATENS FURTHER EROSION OF NATIONAL POLICY OBJECTIVES

The connection between product liability and decline of general aviation is too obvious to belabor. New and greatly expanded legal theories upon which a person can seek to recover money for real or imagined wrongs, e.g. pure comparative fault, joint and several liability, punitive damages (a unique American invention), and "bad faith" suits, to name a few—these plus the "deep pocket" philosophy, with its giant damage awards, have created an insurance crisis and increased the product liability costs of a new aircraft to levels which exceed the entire amount those aircraft could bring in the marketplace.

As a result new small airplanes have been priced out of the market, flying lessons are too expensive, and insurance rates have gone out of sight—that is, if insurance can be purchased at all. As a Director of the AVEMCO Corporation, which writes more general aviation hull and liability policies than any other insurance company in the world, I can speak from experience. Attachment A treats the insurance problem in greater detail.

Absent relief, this downhill slide of general aviation will accelerate as aircraft prices increase, insurance rates skyrocket, and fewer young people find themselves able to get into aviation, no matter how great their desire.

Thus product liability by eating away at the very base of general aviation, is defeating a national policy that calls for a strong and thriving aerospace establishment.

CONCLUSION

This is why, Madam Chairman, your Bill is vital. There will no doubt be other product liability legislation because product liability is a national scourge. But with the strong opposition of the trial lawyers—and some misguided consumer advocates—omnibus legislation will take time. It may also be that overall tort law reform comes through state legislation, a process which seems to be accelerating. But general aviation needs relief NOW, and its problems are sufficiently unique to justify a separate Bill. For one thing, aviation needs a federal law because it is interstate in nature and federally regulated.

We must get ourselves back on the track of our national policy objectives. The Bill, if enacted, will move us in this direction.

Thank you for giving me the opportunity to testify. I'll be happy to answer any questions which you or the Committee may rise.

PRODUCT LIABILITY AND AVIATION INSURANCE

If it is true that people and technology are the basic elements of our aerospace establishment, it is also true that insurance is the glue that holds the system together. Today it is no exaggeration to say that product liability litigation has created an insurance crisis, and the glue is melting. The judicial expansion of the legal theories upon which a person can seek to recover money damages for any real or imagined wrong; pure comparative fault; joint and several liability; punitive damages; and "bad faith" suits against insurance companies—all these exacerbate the problem. Here are a few examples.

Under the doctrine of pure comparative fault a plaintiff can file, prosecute and recover a money judgment in court even if he is 99 percent at fault for the cause of his injury. The defendant's insurers must incur the cost of defending these lawsuits.

With "bad faith" suits an insurer faces a second lawsuit for "bad faith" every time he or she rejects a settlement demand (no matter how outrageous)—or for failing to negotiate, trying the case for the insured and winning the case.

Punitive damages create very real problems for insurers. In California one insurer has been held to have a duty to defend and insure in a lawsuit where the only issue was punitive damages, even though the California Supreme Court had held that it is against public policy in California to insure for punitive damages.

Clearly punitive damages need to be limited. Case of willful negligence and reckless disregard have been suggested as the only kinds where punitive damages should

be considered. In any event, if punishment is deserved, it should not be the insurer who is punished, for when this is done punitive damages are not really punitive.

In two recent cases it was held that an insurer not only has an obligation to pay the legal fees and expenses of the attorney it hires to defend the insured under the terms of the policy; he or she must also pay the fees of the attorney picked by the insured if the demand of the plaintiff exceeds the policy limit.

One other problem area should be mentioned. Policies of insurance are generally very carefully written. Although there are occasional ambiguities in a policy, the plaintiff's bar, supported by the liberal appellate courts, have used contrived, convoluted and strained logic to broaden the duty to indemnify and defend an insured. An insurer charges a premium for a known risk. If the various State courts continuously change the rules on the insurer after the fact, the insurer is forced to assume a broader risk without getting an appropriate premium for that risk. In other words, he or she cannot identify the exposure.

If you add these problems to the costs associated with the ever increasing number of specious lawsuits and the increases in jury verdicts, you can see why insurers are increasing premiums and withdrawing from certain classes of business.

This type of problem is further compounded by the legal fictions that serve to increase verdicts in favor of plaintiffs. Two examples are illustrative. In a wrongful death case where the widow has remarried, the rules of evidence (at least in California) preclude the defendant from introducing into evidence the remarriage; and yet the plaintiff's attorney is free to introduce evidence showing the alleged economic loss to the "widow" for the rest of her life. We also have a rule of evidence called the collateral source rule which allows the plaintiff to recover payment for medical bills even though they have been paid by another insurance company.

All of which has brought us to the point where there is not enough insurance capacity in the United States to cover the expanded risk. Meanwhile the reinsurance market in Europe has dried up and will remain so until the product liability picture in this country makes more sense than it does today. We must remember that in the eyes of our friends in Europe, where there is very little product liability litigation and no system of punitive damages, what is happening here is a theater of the absurd. They want no part of it.

Of special interest to the Committee is the possibility that adoption of new technology available to manufacturers may be deferred because of the risk that the modification will be used as evidence in a product liability court case. Clearly there is a need for legislation to make such changes inadmissible as evidence—thus removing a potential impediment to technological advance. Most of the product liability bills which have been proposed contain provisions that would indeed make so-called remedial measures inadmissible as evidence. There is also reason to wonder whether the disappearance of some of the smaller and more innovative aircraft companies is due to the increased product liability risks.

To summarize:

Aviation insurance, which is vital to a thriving aerospace system, is losing its ability to fulfill its essential role.

Product liability may be slowing down the adoption of technological improvements and discouraging small, innovative aviation businesses.

Senator KASSEBAUM. Thank you very much, Mr. Von Kann.
Mr. Sheehan.

Mr. SHEEHAN. Thank you very much, Madam Chairman. Thank you for the opportunity to come and speak on this important subject. Just as a little background. I would like to tell you the interest of the association has in being here. We have 260,000 members that own and fly general aviation aircraft in the United States. They own two-thirds of all the single and multi-engine piston aircraft in the United States, and fly between 70 and 75 percent of all the hours that these aircraft fly.

Obviously, our members are the first ones at the scene of every accident, so our interest in this has been piqued over the last couple of years. In fact, we received in the neighborhood of 30 to 50 letters per month over the last year and a half from our members expressing con-

cern about the product liability problem. Their concerns range all the way from obviously being priced out of the market for buying new and used general aviation aircraft. Their perception, though, is that it is the system that is at fault. That is, our legal system is at fault rather than the manufacturers who are merely reacting to an aberration of our legal system that makes them raise the prices.

I guess more than anything our concern comes from the standpoint that the current product liability crisis is stifling technological innovation in the industry, and it has all but foreclosed new entrants into the market. In a labor-intensive effort such as manufacturing aircraft there has to be technological innovation if we are to progress and have aircraft for the future. We have seen no new entrants in the last 5 or 6 years that have gotten into the general aviation manufacturing business. In fact, we have seen many small general aviation manufacturers all but priced out of the business, and they have either gone bankrupt or voluntarily left the field, so this is quite important.

We have a dilemma as a consumer organization. We do not want to preclude any of our members' rights from seeking redress from any damages that they may have incurred through faulty products. Similarly, though, we do not want to kill the goose that laid the golden egg. We do not want to make sure through litigation that all the manufacturers are effectively priced out of the business. Because of these concerns, we decided to objectively evaluate the problem, and on April 1 and 2 of this year we conducted a general aviation product liability symposium here in Washington, and this symposium encouraged representatives from the manufacturers of not only air frames but also parts and engines, representatives from the insurance industry, attorneys from both the defense and the plaintiff side, consumers, in addition to our group, and legislators from the Congress and from representatives from the Administration to all come and discuss the problem, and to come up with some common thread so that we could attack the problem in a concerted fashion.

The message was quite clear as a result of this product liability symposium that we did need tort reform, and not just tort reform as a general idea, but tort reform from the Federal level. There has to be a level of uniformity, a level of predictability within our tort law system so that manufacturers can get insurance so they can predict markets and so that they can lower the price of their product.

Because of the strong vote of confidence for tort reform, Federal tort reform, we support Congressman Glickman's bill, H.R. 4142, and did that immediately after the symposium. We also strongly support your amendment to S. 100 for similar reasons. We do have some minor difficulties with the bills as they are written, and we have communicated those to you in a letter last month, but let me emphasize that these are very minor difficulties that I think can be worked out. It is the concept itself that we support, and some of the basic ideas in the legislation are very important to us.

I think we have a unique coalition here that we may never see again in aviation, that is, consumers, manufacturers, defense attorneys, insurers, you name it, all getting together behind a common cause and supporting legislation that could have been quite controversial. We will work very closely with the manufacturers on the two bills, the one in the House and the one here in the Senate, and we are both in concurrence that these two bills will get us to where we want to go.

It is not a question of the manufacturer versus the consumer, as it has been in many other product liability cases. It is a question of preserving one of the most important components of the air transportation system in the United States, that is, general aviation.

Thank you very much, and I would be glad to answer questions later.
[The statement follows:]

STATEMENT OF JOHN J. SHEEHAN, SENIOR VICE PRESIDENT, GOVERNMENT AND TECHNICAL
AFFAIRS, AIRCRAFT OWNERS AND PILOTS ASSOCIATION

Madam Chairman, thank you for the opportunity to comment on general aviation accident liability. We appreciate your interest concerning this issue which is critical to the general aviation community.

The Aircraft Owners and Pilots Association (AOPA) is a non-profit membership association of some 260,000 individual aircraft who fly for both business and personal reasons. We estimate that our membership is two-thirds of the active general aviation aircraft in the United States do seventy-five percent of the flying.

The product liability situation has significant impact on our members as aircraft owners and pilots. In dealing with correspondence that we receive from our members it is clear to us that we have interests on both sides of this debate. On the one hand, interest in ensuring a fair compensation system for our members who may be killed or injured by defective aviation products. On the other hand, we have just as much interest in the availability to our members of safe, quality aviation products at reasonable cost.

The costs of aviation products have risen dramatically in the recent past. Our technical staff tells us that, in the last 10 years, aircraft prices have risen almost twice as fast as the consumer price index (CPI). Between 1974 and 1984, the CPI rose 123%. The average list price of a single-engine, fixed gear airplane rose 257%. Based on the CPI, the average, fixed gear airplane cost \$18,900 in 1974, should have cost \$42,200 in 1984. Instead, it cost \$67,500—about \$25,000 more than if the price increases were due solely to inflation.

The rising costs have put the purchase of new aircraft out of the reach of many of our members. The market in used aircraft is shrinking. Manufacturers will probably tell you, sales are off 90% since 1979. The industry is languishing in its worst slump since the late 1940's and early 1950's. And, these rising costs are putting flying out of the reach of many would-be pilots. We are told by the general aviation manufacturers that a giant part of this increased cost is due to product liability. The General Aviation Manufacturers Association (GAMA) estimates that costs associated with product liability will add an average of \$70,000 to each aircraft delivered this year. Those costs per aircraft in 1972 were \$211.

The market for new general aviation aircraft has all but dried up. While profitability concerns are not the only reason for this, they appear to constitute a major part by a wide margin.

From a long-range standpoint, liability concerns have stifled technological innovation in general aviation. Existing manufacturers and entrepreneurs are totally discouraged from improving existing products or introducing new ones by the high cost of and, sometimes, non-availability of insurance coverage.

Because of our concern about the adverse effects of product liability litigation on general aviation, we sponsored a symposium on the subject in April of this year. Representatives from a variety of interests relative to the problem expressed their views on the subject and participated in a series of workshops designed to seek solutions to the problem.

Aviation manufacturers, attorneys, consumers, legislators, and representatives of the administration concluded that there were several causes of the product liability problem. By far the greatest of these causes was perceived to be our system of tort law and the uneven manner in which it is applied throughout the States. Because of this, the great majority of the participants called for federal tort reform specifically for general aviation. The tort reform features that were considered most important by member the several symposium workshops were as follows:

1. A uniform federal level law to cover product liability cases.
2. An adequate statute of repose. No specific number could be decided upon; however, 17 to 25 years were mentioned.
3. Joint and several liability should be restricted to actual comparative liability.
4. While there was general agreement for limits on non-economic damages, no specific formula or amount was decided upon. (It was acknowledged that this was a long-range rather than a short-term goal.)
5. A sense of urgency must be developed with regard to product liability matters.

The bill introduced by Rep. Dan Gickman, General Aviation Tort Reform Act of 1986 (H.R. 4142), was strongly endorsed by the symposium attendees as a good first step toward tort reform. a consequence of this strong support, AOPA has also backed provisions of this bill with but a few exceptions.

We were quite please when you introduced the General Aviation Accident Liability Standards Act of 1986 (Amendment 1823 to S. 100). Your support of this critical issue is quite welcome and serves to strengthen the case for a specific set of laws for general aviation.

We do have some minor reservations concerning the bill's treatment of statute of repose, time limit in filing claims, burden of proof for proximate cause, and the effective date, which we have noted in our letter of May 6, 1986, addressed to you.

AOPA supports this bill as a means of standardizing tort law for general aviation more predictable and equitable. This is a moderate bill that accommodates the interests of both manufacturers and consumers. While more drastic measures may eventually be necessary, this is certainly a good start.

In summary, we commend you for your action in this matter and will work with you to accomplish the passage of the bill.

Senator KASSEBAUM. Thank you, Mr. Sheehan.

Mr. Winant.

Mr. WINANT. Good morning, madam Chairman, Senator Inouye. I am John Winant, president of the National Business Aircraft Association, and in addition I have the privilege this morning of serving as spokesman for two other general aviation associations, the Experimental Aircraft Association, known by the acronym EAA, whose Washington representative, David Scott, is at my right at the witness table, and the Helicopter Association International, HAI, whose president, Mr. Frank Jensen, is seated on my left.

We three organizations felt that in the interest of conserving time and because we shared a common view with respect to the pending legislation, that we would have one spokesman. If questions might pertain to all three of us, why, we will answer them. I am going to just read some excerpts, if I may, from my statement, madam Chairman, and then ask that the entire statement be entered in the record.

It is indeed rare to find what are essentially consumer groups banding together in support of legislation designed to limit their ability to seek remedies against a product's manufacturer should that product prove defective, yet that is exactly what has happened in this case. NBAA, EAA, and HAI have all independently studied the issue of tort reform and product liability as it relates to general aviation. The conclu-

sion we have reached, again independently, is that the current tort system as it affects general aviation is flawed to the extent that remedial legislation is needed as a means to lower the cost of liability insurance and thus the cost of products purchased.

Toward that end we all endorse the legislative concepts embodied by you in your amendment to S. 100, and we also support H.R. 4142 and H.R. 4717, which are identical bills introduced respectively by Mr. Glickman and Mr. Hammerschmidt. We endorse these measures quite simply as a means to ensure that the aviation community will continue to reap the myriad benefits of general aviation. The simple fact is that this nation's crisis in the product liability arena, whether by reason of injudicious court decisions or uncertainty on the part of underwriter has ravaged the general aviation manufacturing industry. The industry has been adversely affected to the extent that the prospective purchaser of a new general aviation aircraft has far fewer models from which to choose, must pay many thousands of dollars to the manufacturer to cover the latter's liability insurance premiums for older aircraft which are still in use, and when that aircraft needs parts or service, must pay an inflated cost to cover the liability insurance cost of the service or part supplier.

Indeed, if the general aviation manufacturing industry is allowed to continue to wither away to near extinction, the ability of airlines to find qualified flight crew members, which is highly dependent on general aviation activities to train and season prospective pilots would be adversely affected. In addition, the oil and mineral exploration industry which uses light fixed wing and all types of rotor wing aircraft and the banking and package express industry which depend on general aviation aircraft to transport cancelled checks, securities, customers' packages and envelopes, would all be adversely affected to the extent that costs to consumers will increase dramatically.

In short, continued neglect of the product liability crisis facing general aviation will sooner rather than later manifest itself in other seemingly unrelated industries, to say nothing of the overall economy. As significant as the above problems can become, we feel that the adverse impact on the entire general aviation community, manifested in a dearth of new products and improvements in efficiency and capability, are equally serious. There is no doubt that the question of tort reform, unless favorably and quickly resolved, will inevitably lead to the inability of general aviation manufacturers to offer improved products at prices their prospective customers are willing to pay. Where there is no incentive to innovate, where there is fear of the consequence of introducing new products, a situation of atrophy is bound to occur. Atrophy will lead to decline, and decline to eventual decimation of this industry upon which we depend so heavily.

Our written statements suggest three areas of the bill which we believe require further study. The first is the 12-year statute of repose which we feel perhaps is too short. Secondly, we ask that a searching look be taken at the two year statute of limitations provision, feeling that it merits detailed examination, and that it should be extended

beyond the proposed limit. And third, we do feel there should be some examination given, at least in the case of NBAA's position, to the upper limit of 19 seats to an aircraft.

We find that more and more corporations, because of the impact of deregulation and diminished air service to many communities, are relying more and more on shuttle type operations to carry large numbers of employees from one plant site to another. In those cases aircraft which are not traditionally considered as general aviation aircraft are used. The bill may need to address that situation as well.

Thank you very, very much for the opportunity to be here.

[The statements follow:]

STATEMENT OF JOHN H. WINANT, PRESIDENT, NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC., ON BEHALF OF THE EXPERIMENTAL AIRCRAFT ASSOCIATION AND THE HELICOPTER ASSOCIATION INTERNATIONAL

Madam Chair and Members of the Subcommittee: Thank you. I am John H. Winant, President of the National Business Aircraft Association, Inc. (NBAA). On behalf of our 3000 member companies which operate more than 5000 aircraft as a means to facilitate their daily business transportation needs, very much appreciate the opportunity to appear before you today.

In addition, I have the privilege of serving as a spokesman for two other general aviation organizations—the Experimental Aircraft Association (EAA) and the Helicopter Association International (HAI). In the interest of conserving your time and the commonality of our position, these organizations have allowed me to represent them before the Subcommittee to present this statement in support of legislation designed to address the issue of tort reform as it affects the submitted their own written statements for the of this hearing.

Madam Chair, it is indeed rare to find what are essentially consumer groups banding together in support of legislation designed to limit their ability to seek remedies against a product's manufacture should that product prove defective. Yet, that is exactly what has happened in this case. NBAA, EAA and HAI have all independently studied the issue of tort reform and product liability as it relates to general aviation. The conclusion we have reached, again independently, is that the current tort system, as it affects general aviation, is flawed to the extent that remedial legislation is needed as a means to lower the cost of liability, the cost of products purchased.

In the case of NBAA, our position is an issue is a result of detailed investigation by our Board of Directors Associate Membership Advisory Council, both of which have concluded that the worsening product liability situation poses a grave threat to the business aviation community.

Toward that end, we all endorse the legislative concepts embodied by Senator Kassebaum in the General Aviation Accident Liability Standards Act of 1986, amendment 1823 to S. 100, and in H.R. 4142 and H.R. 4717, identical bills known as the General Aviation Tort Reform Act of 1986, sponsored by Representatives Dan Glickman and John Paul Hammerschmidt, respectively.

These legislative proposals aim at reforming what NBAA considers to be grossly inequitable disparities between tort procedures in the various states. In addition, measures would establish national norms and would provide that adequate just recourse exist for the fair adjudication of complaints, repair effects and, in cases where gross fault appears to exist, for the establishment of responsibility and for restitution or award for damages, loss of life suffering.

We endorse these measures, quite simply, as a means to ensure that the aviation community will continue to reap the myriad benefits of general aviation. The simple fact is that this nation's crisis in the product liability arena, whether by reason of injudicious court decisions or uncertainty on the part of underwriters, has ravaged the general aviation manufacturing industry. The industry has been adversely affected to the extent that the prospective purchaser of a new general aviation aircraft has far fewer models from which to choose, must pay many thousands of dollars to the manufacturer

to cover the latter's liability insurance premiums for older aircraft which are still in use and, when that aircraft needs parts or service, must pay an inflated cost to cover the liability insurance costs of the service or parts supplier.

This phenomenon has led, predictably, to a stagnation of growth and innovation in the general aviation manufacturing industry. The General Aviation Manufacturers Association (GAMA), which is testifying before you today, has numerous types of data, including recent examples of unconscionable court decisions to support such a contention. As representatives of consumers who use the products manufactured and sold by GAMA's member companies, we must point out that the product liability situation, which in 1985 contributed to the worst year for general aviation manufacturers since World War II, has implications far beyond our immediate concern of the significant impediments posed to the ability of a business to use an aircraft as a transportation tool or the individual to use an aircraft for personal transportation or recreation. Indeed, if the general aviation manufacturing industry is allowed to continue to wither away to near extinction, the ability of airlines to find qualified flight crewmembers, which is highly dependent upon general aviation activities to train and season prospective pilots, will be adversely affected. In addition, the oil and mineral exploration industry, which uses light fixed-wing and all types of rotor-wing aircraft, and the banking and package express industry which depend upon general aviation aircraft to transport cancelled checks, securities and customers' packages and envelopes, will all be adversely affected to the extent that costs to consumers will increase dramatically. In short, continued neglect of the product liability crisis facing general aviation will, sooner rather than later, manifest itself in other, seemingly unrelated industries, to say nothing of the overall economy. Thus, those who would maintain that general aviation does not deserve "special treatment," i.e., specific legislation addressing the manner in which product liability costs affect it, are simply avoiding the realities of this most complicated and frustrating situation.

As significant as the above problems can become, we feel that the adverse impact on the entire general aviation community, manifested in a dearth of new products and improvements in efficiency and capability, are equally serious. In NBAA's opinion, there is no doubt that the question of tort reform, unless favorably and quickly resolved, will inevitably lead to the inability of general aviation manufacturers to offer improved products at prices their prospective customers are willing to pay.

However, in supporting tort reform for cases arising from the use of general aviation aircraft, NBAA wishes to stress that we have the responsibility to ensure that owners and operators of business aircraft will be able to deal confidently with manufacturers and suppliers of services in the knowledge that what they purchase is properly designed, safely constructed and backed by honorable warranty. Thus, we wish to take this opportunity to make some specific recommendations for improvement in these measures.

Both the Kassebaum Amendment and the Glickman/Hammerschmidt bills include a statute of repose of twelve years. We question the adequacy of this limit, especially in light of the fact that the average age of general aviation aircraft currently in the fleet is approximately fifteen years. Ironically, the product liability problem has contributed to this average age and, until meaningful tort reform is enacted and its effects realed in both the new aircraft market and the insurance market, this number will continue to increase. Consequently, we feel that a lengthened period during which an aircraft owner may bring suit against the manufacturer is in order. To do otherwise would preclude the vast majority of aircraft owners from seeking a judicial remedy to a perceived tort claim. Of course, as older aircraft are retired from the fleet and, hopefully, new ones are purchased, this number could be reexamined with an eye toward shortening the period of repose. The exact number of years for the statute of repose in those measures should be determined after extensive study.

However, we note that, when considering parts and appliances installed on an aircraft, the statute of repose would begin from the date of installation of the item, not the date of the aircraft's manufacture. We consider this to be an admirable manifestation of the realities of aircraft purchase and operation and urge its retention in any legislation to be enacted.

Another time limit in both measures is the statute of limitations, currently set at two years. Again, we are concerned that this period is too short and that it should be lengthened.

As this Subcommittee is aware, the aftermath and investigation of an aircraft accident can be an extended process. Not only does a proper determination of the cause of an accident require a significant length of time for study and analysis but the time between the accident and the coming to trial of any action arising from the accident can be extraordinary. In situations where the alleged negligence of a party may not come to light until long afterward, a statute of limitations of only two years from the date of the accident can clearly be insufficient, thus thwarting the best efforts of a potential claimant to properly identify the manufacturer supposedly at fault or the provider of certain services to the aircraft. Again, we recommend an extended period of time, the exact length of which should be the result of detailed examination.

Finally, we question the necessity for and effect of limiting the application of these measures to aircraft with seating capacities of 19 or less. As fewer small, personal aircraft are being manufactured today and as the vagaries of airline deregulation force more and more decentralized businesses to seek to provide their employees with a more reliable means of air transportation, what were formerly considered to be "airline" aircraft are seeing increased use in typical general aviation operations. Indeed, many prospective purchasers of aircraft seek ever-larger passenger capacities and operational capabilities, sometimes approaching a scale directly comparable to a scheduled air carrier operating an aircraft. Such use frequently demands the operation of an aircraft originally designed for use by a medium to large airline. Consequently, we recommend that this provision receive close examination from all parties, lest manufacturers find that they are exposed to a potential liability "problem" equal to or exceeding their current troubles. A means to avoid this potential might be to provide that the legislation at issue considers tort claims arising from the operation of an aircraft in any non-scheduled manner, regardless of its size or intended use.

The foregoing suggestions notwithstanding, we fully support this legislation and wholeheartedly urge its rapid enactment. Toward this mutual end, we stand ready to assist this Subcommittee and its able Chair and trust that we will be called upon should the need arise. Thank you for allowing me to present this statement. I will be happy to answer any questions you may have.

STATEMENT OF FRANK L. JENSEN, JR., PRESIDENT, HELICOPTER ASSOCIATION INTERNATIONAL

Madam Chair and Members of the Subcommittee: This statement is submitted on behalf of the more than 1,000 member companies of the Helicopter Association International (HAI), which is the trade association of the helicopter industry.

HAI's overall views in the important matter of product liability are also represented in the testimony of Mr. John H. Winant, President of the National Business Aircraft Association. This statement provides added comments intended to illustrate some of the special concerns of the civil helicopter industry, over and above the very accurate and correct statement of Mr. Winant.

One important factor, which exacerbates the product liability problem and the insurance problem for HAI's members, is the great diversity of tasks which the typical helicopter operator is called upon to perform routinely. A listing of the operations which are typical for a helicopter operator follows: agriculture, air carrier, air taxi, construction, corporate transport, fire control, forestry, EMS, and law enforcement, as well as many others.

Recognizing the severity of the product liability/tort claims problem, HAI has sent a detailed survey form to its member companies, and others within this diversified industry. The results of this survey have borne out our concerns—the vast majority of the respondents are having serious problems with obtaining, often at any price, liability coverage which is needed for the continuation of their respective businesses.

As major steps toward the resolution of this crisis in our industry, the Helicopter Association International strongly endorses the legislative concepts which are incorporated in the Kassebaum Amendment to S. 100, and in H.R. 4142 and H.R. 4717.

On behalf of the Helicopter Association International, I extend full support to this Subcommittee, and offer to assist in any manner which may be deemed appropriate by its very able Chair.

STATEMENT OF THE EXPERIMENTAL AIRCRAFT ASSOCIATION

Madam Chair and Members of the Subcommittee: The experimental Aircraft Association (EAA), its 100,000 members and the non-profit EAA Aviation Foundation thank this subcommittee for its action on this critically important issue and appreciate the opportunity to present a written statement on the impact of the current product liability and insurance availability crisis. In addition to this statement, Mr. John H. Winant, President of the National Business Aircraft Association (NBAA) will present oral testimony, before the subcommittee, on behalf of NBAA, EAA and the Helicopter Association International (HAI).

EAA is keenly aware of the current crisis in product liability and related issues. We are intensely interested in the search for solutions to this complex problem. In order to understand the nature of our concern, it is important to realize that our members are aviation enthusiasts from all walks of life who passionately love the freedom of personal flight. Although we are an international organization with over 700 "grass roots" chapters around the world, the majority of our members could easily be classified as an excellent cross section of America.

As a consumer oriented organization, EAA has promoted safety and efficiency in aviation and the accessibility of aviation for all who choose to partake in it. To this end, EAA which was founded 34 years ago by our President, Paul H. Poberezny, publishes four monthly magazines and one bi-monthly magazine, which cover the entire spectrum of the fastest growing segment of aviation . . . sport aviation. The non-profit EAA Aviation Foundation has constructed an extremely well regarded aviation museum in the city of Oshkosh, Wisconsin in conjunction with EAA's international headquarters. The Foundation also sponsors aviation research and development, the preservation of our precious aviation heritage and the encouragement of aviation education.

Since the 1985 EAA International Fly-In Convention and Sport Aviation Exhibition has already received a great deal of publicity, I will not dwell upon it. However, if I may, I would like to refresh the committee's memory on the statistics regarding the annual EAA Convention. This year, well over 750,000 aviation enthusiasts from every state in the union and 66 different foreign countries attended the convention. Over 15,000 aircraft flew into the convention and accounted for over 64,000 landings and takeoffs . . . that's more than four times busier than Chicago O'Hare International Airport. In terms of aircraft, the 1985 EAA convention attracted everything from the world's smallest twin engine homebuilt aircraft to the supersonic British Airways Concorde. Our distinguished visitors included Federal Aviation Administrator, Donald Engen, NASA astronauts, EAA member John Testrake, who captained the TWA hostage flight and thousands of other EAA members from widely diverse backgrounds. As usual, the purpose of the EAA convention was to provide the world focal point for the exchange of information and education in an appropriate setting during one of aviation's premiere events. The EAA Aviation Foundation sponsored over 500 forums, seminars and workshops on every aspect of aviation.

Our convention is one of the areas which has been affected by today's liability and insurance crisis. Although the EAA convention has had a very good safety record and is extremely efficiently organized, our insurance premiums for the eight day event were increased by some 300% in one year. In spite of this outrageous increase, we were forced to accept \$5 million less liability coverage than we previously enjoyed. We were told, quite frankly, by our insurers, that the premium increase had nothing whatever to do with the event itself . . . we were told that we were paying the price for unrestrained and unreasonable liability suits across the country. It was a "take it or leave it" situation. In the future, even that may not be available.

For many of us in aviation, insurance has already become either unavailable or unaffordable. Although this crisis is affecting all Americans, the aviation community has been deeply injured by this critical situation. There are many examples of the effect of this crisis on EAA members.

Many of our EAA members indulge in what some would call a unique hobby . . . they build their own airplanes and restore historic antique and classic aircraft. In fact, there are over 11,000 amateur-built, homebuilt, airplanes flying in the skies over America. In terms of safety, these handcrafted, privately owned, aircraft are on par with their commercially manufactured brethren. However, the homebuilts clearly reflect the cutting edge of aeronautical technology. Many of them are faster, more fuel efficient and have greater range than comparable commercially built aircraft. In fact, many of the innovations in aviation today have come from the amateur-built movement. It is our opinion that the major manufacturers have been unable to take advantage of recent technological breakthroughs for fear of product

liability exposure. For that reason, utilization of emerging technology has been left to the American amateur aircraft builder.

It is a sad commentary on the state of the industry when one realizes that EAA members built more airplanes last year, in their back yards, basements and garages than all of the commercial airplane manufacturers put together.

Nevertheless, amateur aircraft builders are also facing their own insurance and liability woes.

The amateur-built aircraft movement was revolutionized by Burt Rutan, who designed canard-type aircraft made entirely of composite materials similar to fiberglass. In addition to these highly popular high-tech designs for the amateur aircraft builder, Burt Rutan has designed a jet trainer for the United States Air Force. He has also designed and built the "Voyager" which is the only airplane capable of flying around the world, non-stop, unrefueled. This epic making journey, which is scheduled for next year, will take 12 days in the air. Burt Rutan has also designed and built the beautiful new "Starship" which is being heralded by the Beechcraft Corporation as the beginning of a new era in aviation.

Unfortunately, Burt Rutan, who made his name in the amateur-built aircraft field, announced, recently, that he is leaving the homebuilt movement. He will no longer sell plans to amateur aircraft builders or license suppliers. He has taken these drastic steps in order to limit his exposure to unreasonable and unwarranted product liability suits.

Directly across the airfield from the EAA Aviation Center in Oshkosh, John Monnett established a factory to produce aircraft kits. The high technology kits which he produces are of his own popular design. These airplanes have proven to be efficient to build, they fly well and they are quite attractive. Unfortunately, John Monnett was recently faced with a dilemma; either close the doors and shut down the factory or find a buyer for his business. He recently said that the most important factor in his decision was the unaffordable product liability insurance premiums and the daily nagging fear that he and his family would be targets of an unwarranted and unreasonable liability suit. John Monnett has sold his new high tech company. It is now a part of a British corporation.

Many of the high technology designers and builders of amateur-built aircraft are facing the same dilemma. One of the most respected manufacturers in the entire amateur aircraft building movement is on the ropes. Although for business reasons, he has asked that he not be identified publicly, he has confided to us that 1986 will be time of decision for him as well. He has told us that an in-depth audit of his products and processes has revealed that 30% of the price of his aircraft kit is directly related to product liability insurance premiums. That is 30¢ of every dollar the consumer spends on this particular aircraft kit. This manufacturer expects \$4 million in sales during the coming year. His insurance company is demanding a product liability insurance premium of \$700,000. That is roughly two-and-a-half times his annual profit. By the way, that coverage is only for \$5 million. Last year, the same manufacturer was able to obtain \$25 million of coverage for \$167,000 premium.

Because liability insurance is so outrageously expensive, many of the manufacturers, designers and suppliers have either been forced out of business or they are forced to go naked into the jungle . . . without the comfort of the protection of liability insurance.

These hardships are not only borne by aircraft kit manufacturers and their consumers. Our non-profit Foundation sponsors a flying museum. It is made up of rare aircraft that are flown to festivals and airshows around the country. For many Americans, this is the only opportunity they will even have to see and hear a part of our precious aviation heritage in the sky.

The EAA Foundation flying museum is made up of a number of aircraft including a B-17 Flying Fortress, a P-51 Mustang, a Ford Tri-Motor, a spirit of St. Louis Replica and others. The B-17 is one of fewer than a half dozen still in flying condition. This World War II bomber is the subject of an exceedingly careful and diligent restoration and maintenance program. Recently, in the course of a recent inspection, some minor corrosion was found in the aircraft's enormous tail section. In order to rectify the problem, it was necessary to obtain several large sheets of aircraft quality aluminum. FAA's purchase order was rejected by a major aluminum supplier because it did not want to take the liability risk of having its product utilized in an aeronautical application. We were faced with the grounding of the airplane if we did not obtain the materials we needed. Eventually, we found other sources for the materials we needed. It is becoming increasingly common for material suppliers to say that they will sell aircraft builders anything they want . . . as long as they do

not admit that the material will be used on an airplane. Otherwise, the suppliers' insurance costs and his product liability exposure increases dramatically.

The non-profit EAA Aviation Foundation has conducted an extensive alternative fuel research and development program which has resulted in federal approvals for the use of unleaded automobile fuel in airplanes designed to use 80 octane fuels. Based upon our research and the engineering flight test data that we have gathered, the Federal Aviation Administration has approved the use of unleaded auto fuel in over 400 light aircraft models. This is important because 80 octane aviation gas is a fuel that is rapidly being phased out by major refiners. The only other alternative fuel, 100 low lead av gas, is harmful to the 80 octane engine. Also, and perhaps most importantly, auto fuel is on average roughly 60¢ less expensive per gallon. This means that pilots using auto fuel are able to fly more economically and more often, improving their proficiency and safety.

Today, over 21,000 airplanes have been issued Supplemental Type Certificates and are legally crossing this country, efficiently and economically, powered by automobile fuel. There is, however, one major problem.

Although there are over 6,000 public airports in this country, only 400 provide automobile fuel for their customers who are able to use it in their aircraft. Why? The answer is easy and apparent . . . the fear of product liability exposure.

In their fear of increased product liability exposure, the airplane engine and airframe manufacturers have refused to acknowledge the fact that unleaded car gas is a perfectly acceptable substitute for 80 octane av gas in an airplane designed to utilize 80 octane fuel . . . the same is true of many petroleum refiners. As a result, many airport managers and Fixed Based Operators are reluctant to provide auto fuel to their customers who are eligible to use it, for fear of increasing their liability exposure. In fact, the President of the National Aviation Transportation Association (NATA) said recently that product liability was one of the major reasons why NATA's fixed based operators have failed to endorse the use of auto fuel.

Clearly, under ordinary circumstances, it is illogical and unreasonable for local authorities to discriminate against the use of auto fuel when an agency of the Federal government itself has approved its use. But, these are not ordinary times . . . there is a giant abroad in our land has cast its shadow of fear over all of us . . . a fear of product liability exposure, a fear of unreasonable and unwarranted liability suits, a fear of losing all that we and our families have achieved. This fear is accentuated by the fact that adequate protection in the form of insurance is either unobtainable or unaffordable.

In an effort to quantify the magnitude of the effect of the current liability crisis on our EAA members, we have conducted a survey of a statistically sound sample of EAA members. The data indicates:

The majority of EAA members have experienced higher liability insurance premiums . . . increases as much as 400%.

Roughly ¾ of all EAA members responding to the survey are seriously concerned about product liability issues affecting sport and general aviation or perceive the problem as one of crisis proportions.

They have also seen an increase in the fear of product liability exposure in their non-aviation related business and employment.

EAA members agree, overwhelmingly, that the cost and availability of aviation related liability insurance constitutes a problem.

Members responding to the questionnaire generally feel that the legal system, courts and juries, and the insurance industry are responsible for the crisis and they are overwhelmingly in favor of EAA encouraging action on this issue.

The vast majority of our EAA members do not build or restore aircraft. Those who can still afford it, buy or rent new and used commercially manufactured aircraft. This sub-committee is already well aware of the enormous product liability and attendant insurance problems that are facing the general aviation manufacturers. Please do not view this as the isolated problem of a single small industry. The problems facing the general aviation manufacturers today will have far reaching implications for the future of aviation in America. All of us are paying more premium dollars for less insurance coverage and the situation seems to get worse every day.

EAA is often seen as the organization which provides the activities which are important to aviation enthusiasts . . . an organization of action. However, many, many EAA chapters have found that they can no longer afford the insurance premiums necessary to organize and carry out these activities with peace of mind.

Although we are running out of time, there is still a chance to correct this situation. It is, frankly, too late to point fingers. There is enough blame to go around for

everyone. The point is, we must solve this problem before it kills general and sport aviation and strangles the entrepreneurial spirits of Americans. Please don't delay.

It is essential that we solve this problem without causing any more injustice. All parties must be treated fairly. Consumer rights are important. Anyone who has been injured due to negligence must be free to receive just compensation from the responsible party. In addressing this issue, we must not infringe upon the legitimate rights of consumers or producers. However, it is imperative that we bring some sanity and reason to this chaotic situation.

In a recent editorial, our Founder and President, Paul H. Poberezny, stated, "Everything we in EAA think, do and say, is tied to the philosophy of preserving and improving what we enjoy for future generations. My young granddaughters fly as if it were the most natural thing in the world. What a shame if they and others of their very young generation lose sight of how the freedom of flight was won for them." This product liability and insurance availability crisis can and will destroy the United States aviation industry and sport and general aviation unless steps are taken to remedy the situation immediately.

For that reason, EAA and its members endorse the legislative concepts embodied by Senator Kassebaum in the General Aviation Accident Liability Standards Act of 1986, Amendment 1823 to S. 100 and by H.R. 4142 and H.R. 4717 identical bills known as the general aviation tort reform act of 1986, sponsored by Representatives Dan Glickman and John Paul Hammerschmidt, respectively. EAA has also been extremely supportive of the legislative efforts of Senator John Danforth. Together, we must establish an equitable solution to today's problems or resign ourselves to the end of aviation as we know it in America.

(The following material is excerpted from a series of articles on the product liability crisis which was published in EAA's primary magazine, Sport Aviation.)

Senator KASSEBAUM. Thank you, Mr. Winant.

Mr. Jensen, do you have any comments you wish to make?

Mr. JENSEN. No, Senator. We have written a brief statement which we would like to have included in the record.

Senator KASSEBAUM. Yes. Thank you. It will be, in full, and Mr. Scott, the same for you.

Mr. SCOTT. Madam Chairman, we will have a more formal statement. I think it will be here in Washington this afternoon. And I would like to file it with the Committee in a day or two. The only other comment that I would like to make is that I think Beech and Cessna have very aptly put the problem in perspective by saying that they have withdrawn from the single engine piston market. To replace them are a number of small manufacturers that are attempting to get into this market, and they at the moment are offering aircraft in a kit form which the purchaser will supposedly take home and build himself or have a surrogate build for him. But these manufacturers are extremely reluctant to expand or even consider the possibility of having FAA certification because of the exposure that they will get as a target for liability cases. It is disheartening to find that many of these companies can fill the market that is being left by the established manufacturers, but they won't do it simply on account of the liability problem.

Thank you.

Senator KASSEBAUM. Thank you very much.

Several of you touched on the question of technological innovation and the fear of introducing new products, and Mr. Sontag in his testimony mentioned the fear of introducing new products. I would assume it is not only a question of innovation and the necessary skills, but safety, it would seem to me, would be a consideration as well if we are concerned about innovation and the fear of experimentation.

Do you feel that this legislation would give some encouragement, or are we being overtaken by foreign development that is willing to go in and assume some of these risks? Mr. Von Kann, were you the one who mentioned the expansion in foreign manufacturers?

Mr. VON KANN. Yes, I did, and it is quite true, because even though foreign manufacturers have some exposure to product liability litigation, it is not as much. First of all, they have very little risk in most other countries. Unfortunately, the United States seems to be the home of product liability litigation, and punitive damages seems to be a unique American invention; our manufacturers have the greatest risk to a greater degree. The others are relatively sheltered, and that is where the action is, more and more. In addition to that there are other factors which have to do with government subsidy, but certainly product liability is one of the factors.

Mr. WINANT. Madam Chairman, I would like to comment on the subject of offshore production. Having had a little alert that the issue might be raised at the hearings, yesterday I checked with legal counsel of the two largest manufacturers of business jets which are manufactured offshore. In both cases I was given absolute assurance that because their products are sold through U.S. sales corporations, U.S. chartered and registered corporations, one a Delaware corporation and the other a New Jersey corporation, that there is a very clearcut responsibility levied on those companies. A company buying one of their products finds that he is buying it usually from a U.S. sales corporation, and in both cases those corporations are insured by the self-same small group of less than ten underwriters which the GAMA manufacturer said are the only sources of coverage.

In one of the two cases the manufacturer, which happens to be Falcon Jet, a product manufactured in France, Falcon Jet Corporation, which is the U.S. sales subsidiary, has, based upon information supplied by NBAA, initiated a campaign among all owners of Falcon equipment in this country to write to their Senators in support of your bill. So, it seems to me that the offshore manufacturers at least of sophisticated, advanced aircraft, are in the same dilemma as that which is shared by the U.S. manufacturers, as so articulately expressed this morning.

Senator KASSEBAUM. Well, I was not so much questioning whether or not they would fall under the same legal parameters as whether because of our fear of innovation and technology, and because of the dearth of manufacturing of any training or piston planes, if there were any figures indicating whether manufacturing is moving abroad because of the problem that we face here.

Mr. WINANT. May I comment on that? I just returned Monday from the biennial Hanover air show held in Hanover, Federal Republic of Germany. It is a major world show, and it has heavy emphasis on general aviation. I was very interested this year in trying to assay what is happening particularly in Europe with respect to the U.S. product liability dilemma. I found some things which frankly were disturbing to me. Porsche, which is a company well reknowned for high quality production in automobiles announced and had on display a single

engine piston-powered aircraft engine at Hanover, and to me that is very disturbing.

Here is a world class manufacturing company which I think senses an opportunity because of the product liability dilemma in this country. I cannot attest to the quality of their aircraft engine, but I am certain that their best engineers worked on it. It is a beautiful looking, very compact product. What it may be is the first step of the development of a new light aircraft manufacturing industry in Europe which is willing to step into what they perceive to be a breach. A vacuum always draws something into it. And that may be the case.

I also sensed at Hanover a great deal of consternation over the U.S. situation, and several eminent figures in European general aviation pointed out that there was indeed an opportunity now present which didn't exist in the past for the mounting of a much more pervasive and effective small aircraft manufacturing industry there.

Mr. SHEEHAN. Senator Kassebaum.

Senator KASSEBAUM. Mr. Sheehan.

Mr. SHEEHAN. I can support that. Over the past nine months we have been approached by virtually all the largest European general aviation manufacturers trying to assess the market for general aviation aircraft in the United States. They are all very interested in it, although none of them have made any large commitment to the market. We feel, however, that the French are probably the most interested, and we will probably see some movement from them very soon in that regard.

So, the interest is out there. They are aware of the product liability problem. They have acknowledged it, and acknowledged the fact that they incur almost the same liability as a U.S. manufacturer, but are willing to try it because of the obvious market that is available, and lack of supply of good new airplanes.

Senator KASSEBAUM. General Von Kann, did you have a comment?

Mr. VON KANN. Yes. First of all, I do not think there is any conflict between what has been said here, because foreign manufacturers who sell in our market, of course, have largely the same liability as our manufacturers. Where they sell in other markets it is certainly less true, because the problem is not as serious there.

You asked about safety. This is difficult to document, although it might very well be that Mr. Martin would have some examples, but there is very little doubt that there have been numerous cases where manufacturers were hesitant to take remedial measures or make improvements in the product lest that be used against them in other litigation. In other words, the fact that they made some improvement, has been used in court as proof of their guilt, and I think that somewhere along the way future legislation, either in your bill or others, should look to the matter of making remedial measures inadmissible. Anything that moves toward reducing this liability risk will contribute perhaps indirectly but nevertheless it will contribute, to safety, of course, the inability to innovate is counter to safety, because safety moves ahead with innovation and technical improvements, and if we do not have these, safety will not progress.

Senator KASSEBAUM. Mr. Scott.

Mr. SCOTT. Madam Chairman, may I comment on John Winant's reference to the Porsche engine? This engine was installed in an American-built Mooney air frame, and it was exhibited as Oshkosh, Wisconsin, last year, and then flown around the world very successfully. There was no mechanical problems during that world flight, but there were a lot of paperwork problems, I can assure you of that. But we understand that the Japanese are also interested in the light aircraft engine field. They have been dabbling in it for a number of years. Kawasaki, for instance, was one, but I think from what we understand they will be a lot more serious, and we expect they will be exhibiting at Oshkosh this year in a much more serious manner than before.

Senator KASSEBAUM. Senator Inouye, do you have any questions?

Senator INOUE. Thank you very much. I have just one question. I am certain you are aware that this is a very controversial proposal, and I believe most critics would criticize our Chairman's efforts by suggesting that special treatment is not justified. Mr. Winant has touched upon this, but how would you respond to these critics when they say why should we single out your industry, why not the others?

Mr. WINANT. John Winant would like to take a try at that, as I am sure others will as well. It seems to me there are two points to be made, Senator Inouye, and bear in mind that the group at the table now do not represent the manufacturing sector, but the user sector of the community. First of all, it would seem to me that we have reached a point of absolute frustration. The issue of a broad gauged product liability bill has been a prominent one here on Capitol Hill now for several years, and no bill has yet emerged to my best belief from a committee of either House. And so it seems to us that it is time to try a different approach because the broad gauged approach obviously has failed and failed very dismally to date, and that, I would submit, is one cogent reason, not for special treatment, in the sense of treatment which is prejudicial to anyone else, but a time for what I would call singular treatment of a very, very serious problem. Secondly, I think the kind of statistics that were quoted by the previous panel as to the devastation that has been wrought in a very important industry, albeit not a large one, measured on a grand scale, to me are very convincing proof that this industry is in more urgent need of relief than any other.

Mr. VON KANN. May I add to that, Senator? Of course, I speak for everybody because we have all elements of aviation in our organization, but as I have tried to bring out in my statement, aviation, both military and civil, is so vital to our national and our economic strength that when you look at something that is decimating the most important part of the aviation establishment, the whole people base, if you want to call it that, you are looking at something which is beginning to affect our national strength, military and economic, our national power, our status as a world power.

If this decimation of general aviation continues, we are just not going to have the people to man the establishment—the airlines, the manufacturers, or space because most of them come from there, and right now

the cost of getting into the system is getting out of sight. It is getting too expensive to take flying lessons. The pilot population new starts are tapering off. The number of pilots is diminishing. So I think this is something that is sufficiently unique to justify special and expedited treatment.

Mr. JENSEN. I would like to add something to that also. Your question, Senator, I think, is very pertinent to this particular group, and we should be given special treatment, because, first of all, we are in a very highly visible industry, and speaking for the helicopter pilot we seem to enjoy an even greater share of that high profile. Example: when a helicopter accident occurs, frequently, like the one in Jacksonville the day before yesterday, it is either carrying a news camera or a news cameraman or whatever, and therefore it is right in the public eye, because of our high profile, number one, because of the ostensible deep pockets of the industry which were alluded to by previous witnesses. These two reasons alone, I think, give us cause for special attention such as is being given to us in Senator Kassebaum's proposed amendment.

I think that the industry is viewed totally out of context by many people. For example, when safety is an issue, when an aircraft of any kind crashes or has an incident, and thus provides a basis for one of these lawsuits we have been talking about, it is not viewed in the same context as people view highway fatalities, which, as we all know, run 40,000 to 50,000 per year in this country, so I think because of this high profile, and because of the unreal appearance of deep pockets, that we really need the attention that we are getting in this bill in order to survive.

Senator KASSEBAUM. If I may just add a further comment, the comprehensive bill and the aviation product liability bill are not mutually exclusive. In my opening comments, and in the comments of Senator Dole and Congressman Glickman it was pointed out that I feel aviation is unique in many ways. A case can be made for separate liability legislation because of the intense Federal regulation of the aviation industry from the design to the manufacturing to the airworthiness and of course certification that exists, and I think for that very reason there is an additional responsibility and a very positive case for liability legislation focused just on the aviation industry.

Mr. SHEEHAN. If I could make one final comment before we beat it to death here, it seems to me that we have been trying for a long time to get comprehensive product liability legislation through that is of a general nature. I am aware of it through at least two previous Congresses. Instead of going from the general to the specific, I think what we are doing here is going from the specific to the general. We are trying a little piece of the problem to get it resolved, and maybe we can expand and generalize what we learned from this into a much larger context.

The other, I think, very strong reason that we have here for this particular piece of legislation is that—again, I repeat—I feel we are quite unique in the fact that all parties to the general aviation community are

in unanimous agreement that this particular bill is needed. I do not think you are going to find that in any other community of interest or general interest in the consumer and manufacturing field.

Senator KASSEBAUM. Did we sell you?

Senator INOUE. I have heard one other criticism, that why should we take care of the rich folks?

Mr. SHEEHAN. We are not all rich folks I guess is the thought, and if we do not take care of the problem, there may not be a general aviation as we know it today in years to come. We have gone from a high water mark of some 820,000 pilots just 5 years ago. We are now down below just 700,000. We went from a high water mark of 18,000 airplanes being produced a year just 6 years ago. If we make 1,200 this year we will be lucky. We may not have anything like we know it today, and again, as I emphasize to you, neither the manufacturers nor the consumers are all rich folk. There are a lot of people out there, probably something in the neighborhood of 60,000 to 80,000 aircraft owners that own an airplane that have a retail value of less than \$10,000, less than an automobile today, and these people have an average income that is certainly in the middle income range and the lower middle income range, so you cannot say that we are all rich.

Mr. WINANT. May I add just one element to answer the Senator's good question? There was at the last time we tried to take a measurement of it a total of approximately 300,000 persons employed in general aviation. These would be for the most part, I would say 98 percent of that number, people who pump fuel, who repair aircraft, who install avionics, who are part of the assembly line in a factory making aircraft. These are anything but rich people. These are people who work hard for a living, who earn, I hope, a good day's pay, but anything but a rich man's pay.

It is the jobs of those persons with whom we are fundamentally concerned because those jobs are rapidly disappearing.

Mr. VON KANN. If I could raise one more point, because that is a very good question the Senator asked, it is a matter of keeping the cost of entering the system down to a level where the poor people can become aviators. People like Lindbergh, C.R. Smith, Chuck Yeager, Scott Crossfield, none of those were well-to-do people, but in their time the system was such that they could go to an airport and by taking on some job or working on a plane buy flying lessons not too expensively, I think we would all like to see the system get closer to that rather than something that is so expensive that it is a rich man's system.

Senator KASSEBAUM. There is one other question Mr. Sheehan that I would like for you to answer. It is my understanding there are no training aircraft being manufactured now. How do you see this affecting the future of training pilots?

Mr. SHEEHAN. That is a good point. Just a little background. The number of student starts, and of course every time a pilot learns how to fly he has to get a student pilot certificate, so we know very accurately how many of these people are out there, the number of student starts has fallen off by 45 percent over the last 6 years, so we know that that

is a real factor. Now, the fact that we are in fact building no two place training airplanes will not immediately affect what we are doing. Fortunately, our U.S. manufacturers build airplanes to last. We have trainers still being used in day to day training operations that are 40 and 45 years old. Not many of them, but they are still out there. So we will not be immediately affected by that. But I would say before we get to the end of the decade we will see a problem in that regard, that the number of good used two-place airplanes will not be available to the people who are doing the flight training because of this scarce commodity that we have out there. People will be buying light general aviation airplanes for investment purposes, so they will be taken off the market where they could be used for training. So it will affect us, and we have the promise of good two-place training airplanes coming from at least one manufacturer in the United States, and several manufacturers from outside the country, but I guess I would like to take a somewhat skeptical view and say I will believe it when I see it. We have have promises like that before.

Senator KASSEBAUM. I have just one further question. Mr. Winant, you mentioned examining the 19-seat limit. Do you have a figure you would suggest?

Mr. WINANT. I do not have one this morning, but I would be happy to submit a proposed talking paper on the subject if you would like.

Senator KASSEBAUM. All right. Thank you. Senator Inouye, do you have anything further?

Senator INOUE. Madam Chairman, I would move that the Subcommittee report this measure to the full committee for appropriate action, and do so favorably, and that the Chair be authorized to poll the membership of the subcommittee for this purpose.

Senator KASSEBAUM. Thank yoy very much. Hearing no objection I will do so immediately. I appreciate the motion.

I thank the witnesses very much for helping us build, I think, a very important record for aviation product liability legislation. That concludes the hearing.

[Whereupon, at 11:20 a.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

58

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

NATIONAL AIR TRANSPORTATION ASSN.,

June 30, 1986.

HON. NANCY L. KASSEBAUM

Chairwoman, Aviation Subcommittee, Senate Commerce, Science, and Transportation Committee, U.S. Senate, Washington, DC

DEAR SENATOR KASSEBAUM: The National Air Transportation Association appreciates this opportunity to comment, for the record, on the effects of the high cost of product liability insurance on the general aviation industry. As you know, NATA represents the interests of the nation's fixed base operators and air taxi airlines. Since NATA Members both repair, sell, and own aircraft, they are in the unique position of being concerned with both manufacturers' and consumers' interests with regard to the subject of product liability.

During the Aviation Subcommittee's June 18 hearing on the issue, many witnesses pointed out the tremendous increases in recent years for product liability insurance. Those increases have not been limited to airframe manufacturers; our Members too, have experienced significant increases in insurance premiums. Since FBOs and air taxis typically purchase their insurance as a package (product liability, hangar-keepers liability, general liability, etc.), and pay one premium for that package, it is virtually impossible to identify exactly how much the premiums for product liability insurance alone have increased. However, a recent Association survey indicated that 1986 to 1985 increases in NATA Members' overall insurance costs averaged 46 percent, with the highest increase reported to be 500 percent. NATA Members are indeed concerned about the cost of insurance.

We applaud your efforts to address this problem with the General Aviation Liability Standards Act and lend our full support to your cause. There is, however, one area of concern to us of which you should be aware.

The statute of repose concept—which NATA endorses—has received much publicity as a tool to eliminate manufacturers from the liability chain after a predetermined period of time has passed. We are unsure if the same concept applies to non-manufacturers involved in the product liability loop. For example, is a repair station resolved of liability for repairs made once the statute of repose has expired? If so, we suggest clarifying language be included; if not, we suggest it is only fair that repair stations are treated like manufacturers. We are prepared to assist you and your staff to draft such language.

We appreciate this opportunity to comment for the record. If you need any additional information about the FBO/air taxi industry, we will be happy to provide it.

Sincerely,

LAWRENCE L. BURIAN, *President*

JULY 17, 1986.

Hon. ERNEST F. HOLLINGS,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: Consumers Union, Public Citizen, Consumer Federation of America and U.S. PIRG respectfully oppose Amendment No. 1823 to S. 100, the "General Aviation Accident Liability Standards Act of 1986," which may soon be scheduled for a Senate Commerce Committee vote. This legislation would replace state statutes and common law pertaining to general aviation products liability with federal, negligence-based standards of liability. These proposed revisions of state tort law for the general aviation industry would have an adverse impact on existing safety incentives and would impair the ability of air disaster victims, including innocent bystanders, to obtain compensation for their injuries.

Reforms of the tort system that reduce a consumer's right to redress in the courts without giving victims of unreasonably dangerous and defective products other, equally effective means of obtaining compensation, are completely unacceptable. This bill removes rights from the injured victims of general aviation air disasters, without giving anything back to fill the void. Under this legislation, a motorist driving down the road who was severely injured by a defective, private airplane that crashed into the car, would find it much more difficult to recover for this injury than under current law. The bill's Statement of Basis and Purpose provides: "it is in the national interest to reduce liability claims while providing more rapid and more efficient compensation for individuals harmed in general aviation accidents." (Amendment 1823 at 3). Despite this articulated "national interest," the legislation does absolutely nothing to provide "more rapid and more efficient compensation" for air crash victims.

REGULATION BY THE FAA

The General Aviation manufacturers argue that they deserve special treatment because their industry receives extensive regulatory scrutiny by the Federal Aviation Administration. (FAA). While it is correct to assert, as proponents of the bill do, that the FAA establishes standards for aircraft design, materials, workmanship, construction and performance, the Federal Aviation Act of 1958, 49 U.S.C. 1421(a)(1) (Supp. 1985) specifically requires the agency to set only minimum standards. Minimum standards do not necessarily establish an acceptable level of safety. Government standards may be outdated or underprotective, and may not reflect the state of knowledge of the industry concerning the real safety consequences of their activities.

In addition, in certifying the design, manufacture and airworthiness of a craft, "by regulation, the FAA has made the applicant itself responsible for conducting all inspections and tests necessary to determine that the aircraft comports with FAA airworthiness requirements." [*U.S. v. S. A. Empresa De Viacao Aerea Rio Grandense Varig*, 467 U.S. 797, 104 S. Ct. 2761, 2756 (1984); see also 14 CFR §§ 21.33, 21.35 (1983)]. As the Supreme Court in *Varig* explained, the intimate involvement of aircraft manufacturers' employees themselves in the certification process is compounded by the FAA's own practices:

"With fewer than 400 engineers, the FAA obviously cannot complete this elaborate compliance review process alone. Accordingly, 49 U.S.C. § 1355 authorizes the Secretary to delegate certain inspection and certification responsibilities to properly qualified private persons. By regulation, the Secretary has provided for the appointment of private individuals to serve as designated engineering representatives to assist in the FAA certification process. 14 CFR § 183.29 (1984). These representatives are typically employees of aircraft manufacturers who possess detailed knowledge of an aircraft's design based upon their day-to-day involvement in its development. See generally *Improving Aircraft Safety* 29-30. The representatives act as surrogates of the FAA in examining, inspecting, and testing aircraft for purposes of certification. 14 CFR § 183.1 (1984). In determining whether an aircraft complies with FAA regulations, they are guided by the same requirements, instructions, and procedures as FAA employees. FAA Order 8110.4 p. 151; CAA Manual of Procedure § .70(b). FAA employees may briefly review the reports and other data submitted by representatives before certifying a subject aircraft. *Improving Aircraft Safety* 31-32; FAA Order 8110.4, p. 159; CAA Manual of Procedure § .77."

Finally, it is ironic that the same community of airplane makers and users, known for opposing regulation by the FAA, is now seeking to hide behind such regulation as a means of avoiding liability for injuring citizens who, out of no fault of their own, happen to be at the site of an airplane crash. A comment from the *Airline Users* magazine, *Flying*, illuminates this point:

"We, the users of airplanes, have brought today's accident rate on ourselves. For years, waving the 'freedom to fly' banner, the general aviation community has opposed proposals for rules, regulations, and procedures that could have a beneficial effect on safety and thus flying less expensive." *Flying*, August 1984.

STANDARDS OF LIABILITY

As we have stated on numerous occasions before the Senate Commerce Committee, we have grave concerns about legislation such as Amendment 1823, which tilts the balance in product liability lawsuits in favor of defendants by making it more difficult for plaintiffs to prove their case. We also oppose the Amendment's imposition of arbitrary cut-offs of victim's rights based only on the age of the product and strongly object to provisions which undercut the doctrine of joint and several liability. Moreover, on two separate occasions—during its mark-up of S. 100 in May, 1985 and its mark-up of the Danforth substitute to S. 1999 last month, the Senate Commerce Committee itself has rejected legislation either mandating negligence as the standard of product liability or undercutting strict liability through the establishment of significant defenses (e.g. state of the art) to the strict liability standard.

Requiring a victim to prove in a product liability lawsuit what only the manufacturer may know about the product is an unnecessarily steep hurdle that would thwart meritorious recoveries. Even where negligence is present, it is often difficult, if not impossible, to prove because manufacturers control evidence about their own state of mind—their own conduct. Indeed, strict liability subjects the injured consumer to rigorous but fair proof requirements. In addition to proving that the product caused the injury, the plaintiff must prove that the manufacturer was responsible for marketing a product that was defective and unreasonably dangerous.

Amendment 1823 would inject negligence into strict liability doctrine by allowing defendants to evade liability where the product conformed to the "state of the art" as defined by what was reasonably feasible in light of existing technology. Even when a plaintiff could show that an airplane was unreasonably dangerous and defective, that plaintiff would also be required to demonstrate that a reasonable manufacturer would have built or designed the plane differently. This would essentially mean that manufacturers would have reduced legal obligation to pursue safety innovations and could content themselves with the *status quo*. Additionally, the amendment would allow the manufacturer to avoid liability where the plaintiff used the aircraft in a manner slightly different than intended by the manufacturer, even though such use was foreseeable and the manufacturer could have reasonably produced a product that would have made such use less dangerous. These defenses would lessen manufacturers' incentives to expend their resources to expand safety. Our constant reiteration that the tort system creates incentives for safety was recently borne out in the June 9, 1986 *Business International*. That publication observed that in response to litigation, "companies are placing fresh emphasis on the product safety function."

LIABILITY INSURANCE

General aviation is not the only endeavor plagued by substantial liability insurance rate increases this year. Professions and activities, such as day care centers, nurse midwives, school bus companies, commercial fishermen, architects, accountants, municipalities, and physicians are similarly affected by the recent crisis in insurance affordability and availability. These groups have experienced staggering rate increases, despite the fact that negligence, not strict liability is the operative liability standard for tort suits against them. The surge in insurance premiums for groups including general aviation is the result of the insurance industry's management practices, not any particular standard of liability.

As the Senate Commerce Committee Report on the Risk Retention Amendments of 1986 emphasized:

"Witnesses noted that the insurance crisis has arisen during a period of falling interest rates, to which competing insurance companies has been underpricing their product in order to maximize cash flow and enhance investment income. When interest rates began to fall, companies were forced to increase premiums because investment income was no longer compensating for underwriting losses. This practice of 'cash flow underwriting' was linked directly to the current crisis." (at page 4)

When interest rates fell, the insurance industry jacked up rates for all liability insurance consumers, not just those involved in general aviation.

Legislation like amendment 1823 which seeks to solve the insurance crisis by making it harder for victims to recover is totally misdirected. The insurance indus-

try has offered no guarantee that premiums will fall as a result of this bill. Instead of solving the insurance crisis for the general aviation industry, the clear result of Amendment 1823 would be more uncompensated victims and unchecked hazards.

THE ISSUE OF SUPPLY AND DEMAND

The source of the economic decline of the general aviation industry can be traced to the surplus of high quality, used airplanes on the market. Amendment 1823 does not address the problems for the industry caused by over supply and reduced demand. The March, 1986 issue of *Industry Week* noted that:

"A great many good used aircraft remain available, especially at the low end—which reflects a basic industry problem: it makes its planes too well. . . ."

"What's more many of the used planes compare favorably with current new models."¹

The Director of Communications at the General Aviation Manufacturers Association explained the present economic picture for the industry as follows:

"It's a rather common opinion that we probably built too many aircraft in the late seventies in response to consumer demand fed by speculation, especially speculation on interest rates and rising prices. It's easy now to forget the heady times back then when everyone was scrambling to buy sports cars and seemingly everything else to avoid higher prices next year—a classic effect of fast-moving inflation. . . . We did enjoy a boom in the mid-1960's and mid-to late 1970's that perhaps clouds our current view of the situation." (Drew Steketee, "Letters to the Editor," *Aviation Digest* (July 1986).

For all the foregoing reasons, we urge you to reject this legislation.

Sincerely,

LINDA A. LIPSEN,
Legislative Counsel, Consumers Union.

JOSEPH GOFFMAN,
Staff Attorney, Public Citizen Congress Watch.

GENE KIMMELMAN,
Legislative Director, Consumer Federation of America.

PAMELA GILBERT,
Staff Attorney, U.S. PIRG.

○

¹ Clearly, the quality of these products demonstrates the sheer arbitrariness of cutting off air-crash victims' right to sue when the aircraft involved is more than 12 years old.